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Supreme Court of the United States

OCTOBER TERM, 1961

No. 369

JAMES I. WOOD, PETITIONER,

vs.

GEORGIA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED AUGUST 30, 1961
CERTIORARI GRANTED NOVEMBER 6, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

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[fol. 1]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

BILL OF EXCEPTIONS—Filed September 8, 1960

To the Court of Appeals of the State of Georgia

Be It Remembered, that on the 7th day of July, 1960, there was filed in the Superior Court of Bibb County, Georgia a citation for contempt of said Court against James I. Wood as respondent, and a rule nisi was issued thereon requiring the respondent to show cause on the 22nd day of July, 1960, why he should not be attached as for a contempt of said Court. The citation and rule nisi was duly served upon the respondent, and upon motion of the respondent the hearing was continued until the 5th day of August, 1960. Prior to the time of hearing the citation, and on July 27, 1960, the same was amended and two additional counts were added thereto.

Be It Further Remembered, that on the 5th day of August, 1960, the respondent filed demurrers to said citation for contempt and also filed his response to the citation; and on said date the Court heard argument on the demurrers so filed by the respondent to the citation for contempt. At the conclusion of the argument upon the demurrers the Court continued the hearing until the 12th day of August, 1960.

In the meantime, and on the 10th day of August, 1960, the citation for contempt was again amended as to each and every count thereof, and on the 12th day of August, 1960, the respondent filed a written renewal of all of his [fol. 2] original demurrers and filed additional demurrers to the citation as twice amended, and argument upon the renewed and additional demurrers was on said date heard by the Court.

At the conclusion of said argument and on August 12, 1960, the Court passed an order overruling each and every demurrer filed by the respondent to the citation.

To said order of the Court dated 12th day of August, 1960, overruling his demurrers, as renewed and amended, upon each and every ground thereof, James I. Wood, respondent, then and there excepted and here and now excepts and assigns the same as error as being contrary to law and he contends that the Court should have sustained his demurrers as renewed and amended upon each and every ground thereof.

After so overruling the demurrers filed by the respondent, the Court continued the hearing until the 13th day of August, 1960.

Be It Further Remembered, that on the 13th day of August, 1960, the case came on to be heard and the same was submitted to the Court upon written stipulations agreed to and submitted by both parties to the litigation. Thereupon, the Court orally adjudicated the respondent guilty of contempt under each of the three counts of the citation and imposed sentence thereon. Said judgment was by agreement subsequently reduced to writing and dated [fol. 3] August 13, 1960, and filed in the Clerk's Office August 19, 1960.

To said order and judgment of the Court dated the 13th day of August, 1960, adjudging him to be in contempt of Court and sentencing him to pay said fines and to serve certain time in the common jail of Bibb County, Georgia, as aforesaid, James I. Wood, respondent, then and there excepted and here and now excepts and assigns the same as error as being contrary to law and says the Court should have found him not guilty of contempt of Court on the basis of the facts submitted.

Be It Further Remembered, that by appropriate orders the Court stayed execution of the judgment of the Court until the tender of this Bill of Exceptions at which time supersedeas was granted and bond was posted by respondent in accordance with the supersedeas order of the Court thereby superseding the judgment until further order of the Court.

And Now Comes James I. Wood, and names himself herein as plaintiff in error and names the State of Georgia

as defendant in error; and within the time allowed by law and within thirty (30) days of the date of the orders and judgments complained of, and presents to the Honorable A. M. Anderson, the Judge who presided in said cause, this his Bill of Exceptions and he prays that the same be signed, certified, and ordered filed in order that said case may be carried to the Court of Appeals of the State of Georgia [fol. 4] so that the errors herein alleged to have been committed may be considered and corrected.

Plaintiff in error specifies as material to a clear understanding of the errors complained of the following portions of the record in the case:

1. The original citation for contempt filed on the 7th day of July, 1960, together with the rule nisi and all other entries of every kind appearing thereon.

2. The amendment to the citation filed on the 27th day of July, 1960.

3. The demurrers filed by the respondent to the citation on the 5th day of August, 1960.

4. The response filed by the respondent to the citation on the 5th day of August, 1960.

5. The amendment to the citation filed on the 10th day of August, 1960.

6. The renewed and additional demurrers filed by the respondent to the amended citation on the 12th day of August, 1960.

7. The order of the Court overruling the demurrers to the citation dated and filed on the 12th day of August, 1960.

8. The stipulation between the parties waiving the necessity for filing a traverse filed on the 12th day of August, 1960.

9. The stipulations of fact filed on the 13th day of August, 1960.

10. The stipulation between the parties agreeing to the introduction of the response of the respondent into evidence [fol. 5] filed on the 13th day of August, 1960.

11. The written judgment of the Court adjudicating respondent in Contempt dated the 13th day of August, 1960, and filed on the 19th day of August, 1960.

12. All orders and entries, including dates of filing, on each and every portion of the record above specified.

Plaintiff in error now shows that the Court of Appeals of the State of Georgia has jurisdiction over this case because the same involves an application of principles of constitutional law rather than a construction of provisions of the constitution; hence, this Honorable Court has jurisdiction over this case and the Supreme Court of Georgia has not.

Plaintiff in error most respectfully submits this his Bill of Exceptions.

Edward F. Taylor, P. O. Address: 321 Cotton Avenue, Macon, Georgia; Charles F. Adams, P. O. Address: 165 First Street Building, Macon, Georgia; H. T. O'Neal, Jr., P. O. Address: 165 First Street Building, Macon, Georgia, Attorneys for Plaintiff in Error.

[fol. 10]

IN THE SUPERIOR COURT OF BIBB COUNTY

PETITION FOR CONTEMPT CITATION—Filed July 7, 1960

To the Honorable Judges of Bibb Superior Court:

Now comes William M. West, Solicitor General of the Macon Judicial Circuit, acting under the law and pursuant to his duty, and on behalf of the State of Georgia, respectfully shows unto the Court the following facts:

1. That James I. Wood, hereinafter referred to as the Respondent, is and was at all times hereinafter referred to the Sheriff of Bibb County, Georgia.

2. Petitioner shows that on the opening day of the June Term, 1960, of Bibb Superior Court, to-wit: June 6, 1960, and the Honorable Oscar L. Long, Judge of said Court, charged the Grand Jury regularly impanelled and sworn

for said term of Bibb Superior Court. A true and correct copy of said charge to said Grand Jury is hereby attached marked "Exhibit A" and by reference made a part of this petition and this paragraph.

3. That on June 7, 1960, while said Grand Jury was in session actually engaged in investigating the matters set [fol. 11] forth in said charge by the Court, the said James I. Wood prepared and issued a written statement, a true and correct copy of which is hereto attached marked "Exhibit B" and by reference made a part of this petition and this paragraph. That said prepared statement issued by James I. Wood ("Exhibit B") was by him and under his direction on said date delivered to reporters of various news media in Bibb County, including the radio stations, the television station and the two Macon daily newspapers, to-wit: The Macon Telegraph and The Macon News, thereby causing the contents of his said statement to be published by all of such news media and thereby disseminated to the general public.

4. That the preparation, issuing and causing said statement ("Exhibit B") to be published and circulated in the manner and form as aforesaid, was in contempt of this Court. Such was done in a course of action designed and calculated to be contemptuous of the Court and to ridicule the said investigation ordered by the said Judge and to hamper, hinder, interfere with and obstruct the said Grand Jury and the said Court in the said investigation ordered.

5. At the time Respondent issued the statement above referred to, (Exhibit B), the said Grand Jury had not completed its investigation into the matters about which it had been instructed by the Court, but was and is now continuing its investigation into said matters.

[fol. 12] Wherefore, petitioner prays that an order be issued by this Court directed to James I. Wood requiring him to be and appear before this Court to show cause why he should not be adjudged and punished for contempt.

Wm. M. West, Solicitor General, Macon Judicial Circuit.

Exhibit A to Petition

Gentlemen of the Grand Jury:

The special instructions now about to be given to you were determined upon and formulated by all of the Judges of this Court en banc after joint consultations and are fully sanctioned by all the Judges.

I am authorized to charge you not only on my own but for Judges Anderson and Bell as well. We all join in these special instructions to you.

A situation has arisen in Bibb County over the last few years which this Court feels should be thoroughly and completely investigated by the Grand Jury. The law enforcement officers, the Courts, the newspapers, the Grand Jury, candidates for public office and the people at large, have permitted a situation to develop in this community to such an extent that it is imperative that this Court and Grand Jury take cognizance of it.

[fol. 13] In election after election where no racial issues are involved, and where there are no other issues involved which could possibly cause any particular group to be honestly concerned about supporting or opposing any particular candidate, we find what appears an inane and inexplicable pattern of Negro bloc voting.

Now there is an answer to the existing situation which should be brought to light so that people of this community may understand what is going on in some of our elections, and do something about it. The people are entitled to know how one candidate or another is able to gather to himself thousands of Negro votes in bloc where there is no apparent reason for it.

This is an instruction to this Grand Jury to immediately make such an investigation of this matter, as will leave no stone unturned to determined the truth or falsity of the many accusations and rumors being circulated in this county concerning the alleged bloc voting of Negro voters in this community.

This Grand Jury is hereby instructed by the Court to investigate and examine into the facts of every election of every kind in this County for the past several years

in which bloc voting is apparent. Although there are many intelligent and independent voters among the colored people who deplore this situation, it is nevertheless obvious that about 80% to 85% of the Negro voters engage in bloc [fol. 14] voting. The fact that a large percent of the colored people do bloc vote demonstrates the fact that they rely completely on self-appointed leaders to do their thinking and evaluating for them and this unfortunately puts these leaders in a position to trade and traffic with thousands of votes and actually, in some instances, throw an election to one candidate or another. We do not mean to say to you that Negroes do not have the right to bloc vote if they wish to do so, if their self interest is a factor in their decision to support a certain candidate, instead of a consideration simply to the person or persons controlling their votes.

Issues, principles or policies may, under some circumstances, justify certain groups in casting similar votes but if the vote is a right it is an individual right and carries with it the duty and obligation of intelligent determination by the individual claiming the right. There is no right of a vote to be bartered, nor is there any right to a vote to be cast in bloc merely at the whim or caprice of domineering individuals or conspiratorial organizations.

Be all that as it may, the matter you are directed to investigate is the persistent rumors and accusations concerning the methods used in the solicitation of the Negro vote and the alleged bartering of the bloc vote. There are accusations that candidates for public office have paid large sums of money to certain leaders of the Negro in an effort [fol. 15] to gain their favor and get the Negro vote. There are accusations that candidates and their supporters have paid, and these leaders of the Negroes have accepted, money for the purpose of influencing the Negro people to bloc vote for certain candidates. This money is supposedly accepted for expenses of newspaper advertisements, radio announcements, letters, workers, etc. in the solicitation of the Negro vote, but there is no doubt that, when the vast majority blindly follow the leaders and vote as they are told it actually amounts to a purchase of thousands of votes

by the favored candidate. The candidates know this and the Negro leaders know this, therefore, these leaders and candidates are in a position to traffic and trade with thousands of votes.

There are also accusations that certain Negro leaders after having met with a candidate and endorsed his candidacy have changed and supported an opposing candidate who put up a large sum of money. This creates an unhealthy, dangerous and unlawful situation.

This sort of practice, if it is true, strikes at the very foundation of our government and will ultimately destroy it if permitted to continue unabated. It tends to corrupt public office holders and some candidates for public office. It puts in the hands of a few people the power to corrupt and this should not be allowed. As has been said "the only thing necessary for the triumph of evil is that good men do nothing."

[fol. 16] As has already been stated, the right to vote is an individual right and carries with it the responsibility of sincere individual determination. This nation was made great by the honest and intelligent use of the ballot. This country and its government will remain great and strong only so long as the people are determined to cast independent, individual votes in accordance with the dictates of their own consciences in electing public officials and in determining other issues of government. For a large segment of the voters to surrender this right and privilege to any person or group is to make a mockery of our elective system, and to do a disservice to the country. This practice could ultimately destroy this country and its system of government. It seems to me that we are facing locally and nationally a serious and devastating situation which will ultimately destroy our government unless good men, colored and white, wake up and encourage all people regardless of race or creed to exercise their inalienable right to cast their own individual votes in accordance with the dictates of their own consciences. Monopoly of the ballot box is the most dangerous of all monopolies. We think it would be appropriate that this matter be brought to the attention of our State Legislature so that it may take

cognizance of this apparently growing situation and strengthen our present laws and pass such new laws as may be needed to discourage this practice.

Gentlemen of the Grand Jury, we do have laws on our [fol. 17] statute books which can and should be used in this situation. Our law provides as follows, in Code Section 34-9907. "If any person shall buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof such person shall be guilty of a misdemeanor."

This same statute provides further as follows: "The hiring of workers qualified to vote in said election or primary before or on the day of election, for the purpose of canvassing for or influencing votes in behalf of any candidate, or the being hired for said purpose, shall be a misdemeanor."

Code Section 34-1907 (1), is also cited to you. It provides as follows: "No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting." Any person who knowingly or wilfully violates any of the provisions of this Section, relating to the preparation of election ballots, shall be guilty of a misdemeanor.

Now, if money is furnished to any person or group of persons for the purpose of hiring people qualified to vote to canvass other voters in an effort to influence their vote [fol. 18] in behalf of any candidate then you are charged that this is a violation of the law and punishable as such. The Supreme Court of Georgia has stated that this is not only a punishable offense but that it is against the public policy of this State. If you find evidence that any person or group has given or accepted money for the purpose of hiring qualified voters to canvass or influence voters to support any candidate, or to solicit and haul voters to the polls for the purpose of voting for a certain candidate

then you are charged that all who participate in such, whether as a principal or an accessory, are guilty of a violation of the law. This type of offense is a misdemeanor and under the law all persons who procure, counsel, command, aid or abet in the commission of this offense are regarded by the law as principal offenders and may be indicted as such. The words "aid and abet" taken together comprehend all assistance to the offense given by acts, words, or encouragement or by presence actual or constructive. The punishment prescribed is 12 months on the Public Works Camp, 6 months in jail and a fine of $1,000.00. The Judge in his discretion may impose all or any part of these punishments.

Some may say that the hiring of people for the purpose of canvassing and influencing voters to vote for one candidate rather than another is a common practice in elections and therefore should be overlooked. It is obvious that the [fol. 19] situation we face today demonstrates the wisdom of this law. Even if the paying of money to certain leaders to be used in the solicitation of the bloc vote is not, in fact, an actual purchase of the votes it is in direct violation of the law which the Court has called to your attention.

In this connection, the Court calls to your attention the instructions given you at the time of your original organization. The criminal laws are enacted by the Legislature to be kept by the people to be enforced by the Courts against all of those who violate them. It is not a question with the courts and juries as to the wisdom or propriety or desirability of any particular criminal law; that is for the Legislature. It is enough for you and me that the Legislature has declared it to be the law. Any other attitude toward the enforcement of the law could only breed chaos and contempt for all laws and courts. Every situation which tends to encourage violation of the law should be so handled that it shall be abated before there are more serious violations. A calm, deliberate and consistent enforcement of all criminal laws against all who violate them is the highest duty of this Jury and Court.

These rumors being circulated, and about which you have been charged, are either true or false and it is the duty of this Grand Jury to determine wherein the truth lies.

Some questions which this Jury should have answered [fol. 20] in your investigation of elections are: Was the Negro vote delivered in bloc to any candidate or candidates? If so, who delivered it and how was it done? What contact did the candidates or their supporters have with the Negro group or its leaders? What money was involved, if any? How was the money used? What workers were employed? What promises did the candidate make, if any, in order to obtain the bloc vote?

It is a distressing thing to hear candidates for public office profess that they stand for good government, and honesty in government, while, at the very moment they are secretly putting up money with, and making promises to, certain groups to obtain an unfair and unlawful advantage of their opponent.

It is not unusual to hear a candidate proclaim that there are no racial issues involved and that he represents no special interest, that he is beholden to no particular individual or group, and yet we find him on election day getting an almost solid Negro bloc vote, and no satisfactory explanation is ever offered.

Now, gentlemen, it should be emphasized, and you cautioned, that the Court has only one desire in bringing this matter to the attention of the Grand Jury and that is to insure that every person who offers as a candidate for public office in this county shall have the right to a fair and honest election on the merits of the candidate and on his platform and that he shall not be defeated or elected [fol. 21] by unfair, corrupt or unlawful practices by any person or group of persons regardless of who they are.

Now, gentlemen, it is your duty to develop the facts of this situation and if there is sufficient evidence of unlawful acts, then all parties participating, white and colored, candidates or non-candidates, should be indicted by this Grand Jury so that the guilty parties, if there are any, may be brought to trial.

Furthermore, it is your duty to bring to light those practices which, while not technically in violation of any law, are yet so immoral or corrupt as to be destructive of the purposes of our system of elections. It is further your

right and duty to determine what additional laws, or amendments to existing laws, are needed to adequately deal with the situation with which we are faced and to recommend enactment thereof by the Legislature.

The enormity of the task assigned you by these instructions is recognized, but surely all good citizens, both public and private, who stand for good government and an honest elective system will be willing to come before this Grand Jury and disclose every fact concerning the matters about which you are being instructed.

[fol. 22]

EXHIBIT B TO PETITION

NEWS RELEASE

The people of Bibb County should take notice when their highest judicial officers threaten political persecution carried out under the guise of law enforcement.

Whatever the Judges' intention, the action of the Superior Court Judges ordering a Bibb County Grand Jury to investigate "negro block voting" will be considered one of the most deplorable examples of race agitation to come out of Middle Georgia in recent years.

At a time when all thinking people want to preserve the good will and cooperation between the races in Bibb County, this action appears either as a crude attempt at judicial intimidation of negro voters and leaders, or, at best, as agitation for a "negro vote" issue in local politics.

No one would question the duty of a Grand Jury to investigate any and all election law violations. However, simple justice would demand that the Judge not single out the negro people for particular investigation. If we seriously wish to enforce the old law against hiring workers for canvassing or influencing voters, then let us start by indicting our U. S. Senators, Congressmen, and Governors and almost all elected State officials.

If we overlook the mountain of white candidates and campaign workers who have violated this old law, to investigate the mole hill of few negro campaign workers,

[fol. 23] then truly we are manipulating the law in a manner to persecute the few.

This is the type of political-legal action which brings down ridicule and demands for civil right legislation against the South.

Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the negro people in this community.

It seems incredible that all three of our Superior Court Judges, who themselves hold high political office, are so politically nieve as to actually believe that the negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some negro leaders.

If anyone in the community be free of racial prejudice, it should be our Judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office.

It further seems the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters.

[fol. 24] However politically popular the judges action may be at this time, they are employing a practice far more dangerous to free elections than anything they want investigated.

James I. Wood

Petition duly sworn to by Wm. M. West, jurat omitted in printing.

[fol. 27]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

AMENDMENT TO PETITION FOR CONTEMPT—Filed July 27, 1960

Comes now William M. West, Solicitor General of the Macon Judicial Circuit, acting under the law and pursuant to his duty, and on behalf of the State of Georgia, and by leave of the Court, amends his petition heretofore filed in this Court and adds thereto two additional paragraphs and shows to the Court the following:

6. That the said James I. Wood, the Sheriff of Bibb County, issued said written statement referred to in paragraph three of the original petition from the Bibb County Sheriff's office, located in the Bibb County Courthouse, the same building where the said Oscar L. Long, Judge of the Bibb Superior Court, delivered the charge to the Grand Jury (Exhibit "A") referred to in paragraph two of said original petition and the same building where the Grand Jury conducted its investigation and inquiry into the matters about which it had been instructed by the Court.

7. That the language used by James I. Wood, Sheriff of Bibb County, in the written statement issued by him (Exhibit "B") imputed lack of Judicial integrity to the three Judges of Superior Court, Macon Judicial Circuit, namely the Honorables A. M. Anderson, Oscar L. Long and Hal Bell.

Wherefore, Petitioner prays that this amendment be [fol. 28] allowed and filed as a part of these proceedings and that the Respondent, James I. Wood, be served with a copy of same in accordance with law.

. . . . . .

Petitioner, William M. West, Solicitor General of the Macon Judicial Circuit, acting under law and pursuant to his duty, and on behalf of the State of Georgia, and by leave of the Court, further amends his petition heretofore

filed in this Court and adds thereto two additional counts and shows to the Court the following:

* * * * * *

. . . . . .

[fol. 31] Count Three 1. That James I. Wood, hereinafter referred to as the Respondent, is and was at all times hereinafter referred to the Sheriff of Bibb County, Georgia.

2. Petitioner shows that on the opening day of the June Term, 1960, of the Bibb Superior Court, to wit: June 6, 1960, the Honorable Oscar L. Long, Judge of said Court, charged the Grand Jury regularly impanelled and sworn for the said term of the Bibb Superior Court. A true and correct copy of said charge to the Grand Jury is attached [fol. 32] to the original petition, marked "Exhibit A" and by reference thereto made a part of this amendment and this paragraph.

3. That on June 7, 1960, while said Grand Jury was in session actually engaged in investigating the matters set forth in said charge by the Court, the said James I. Wood appeared and issued from his office, that is, the office of the Sheriff of Bibb County, located in the Bibb County Courthouse, a written statement, a true and correct copy of which is attached to the original petition, marked "Exhibit B" and by reference made a part of this amendment and this paragraph. That the said Bibb County Courthouse is the same building where the said Oscar L. Long, Judge of the Bibb Superior Court, delivered the charge to the Grand Jury (Exhibit "A") referred to in paragraph two of this Count and the same building where the Grand Jury conducted its inquiry and investigation into matters about which it had been instructed by the Court. That said prepared statement issued by James I. Wood ("Exhibit B") was by him and under his direction on said date delivered to reporters of various news media in Bibb County, including the radio stations, the television station and the two Macon daily newspapers, to-wit: The Macon Telegraph and The Macon News, thereby causing the contents of his said statement to be published by all of such news media and thereby disseminated to the general public.

[fol. 33] 4. On July 7, 1960, said James I. Wood was cited by this Court for contempt of this court on account of his conduct as set forth in the next preceding paragraph; all as set forth in the original petition and order of this Court thereon, which said petition, exhibits thereto and rule nisi thereon are hereby made a part of this amendment and this paragraph by reference thereto. The said original attachment for contempt and rule nisi thereon were filed in the office of the Clerk of Bibb Superior Court on July 7, 1960, and duly served on the said James I. Wood. Whereupon, the said James I. Wood prepared and issued a written statement, a true and correct copy of which is hereto attached and marked "Exhibit D" and by reference thereto made a part of this amendment and this paragraph. That said prepared statement issued by James I. Wood, ("Exhibit D"), was by him and under his direction on July 8, 1960 delivered to reporters of various news media, including the radio stations, the television station and the two Macon newspapers, namely: The Macon Telegraph and The Macon News, thereby causing the contents of his statement to be published by such news media and thereby disseminated to the general public.

5. At the time Respondent issued the statement above referred to ("Exhibit D"), the said Grand Jury had not completed its investigation into the matters about which it had been instructed by the Court, but was and is now continuing its investigation into said matters.

[fol. 34] 6. That the preparation, issuing and causing said statement, ("Exhibit D"), to be published and circulated in the manner and form as aforesaid, was in contempt of this Court. Such was done in a course of action designed and calculated to be contemptuous of this Court and to further ridicule the said investigation ordered by said Judges and to further impute lack of Judicial integrity to all three Judges of the Superior Courts, Macon Judicial Circuit, namely, Honorables A. M. Anderson, Oscar L. Long and Hal Bell.

7. That the written statement, ("Exhibit D"), issued by Respondent in advance of his trial on the contempt citation

contained in the original petition further amounts to an undertaking on his part to inflame public opinion against the Judges of the Superior Courts of the Macon Judicial Circuit and of this Court in reference to said pending contempt trial, and amounts to an effort on his part to deter this Court from a dispassionate consideration of said contempt case in the light of the law and facts. The making and publishing of said statement amounts to an interference in a pending case and the orderly processes of the Court in respect thereto, and constitutes an effort to obstruct justice and is itself a contempt of Court.

Whereof, Petitioner prays that this amendment be allowed and that the Defendant be served according to law and he be required to show cause why he should not be [fol. 35] adjudged and punished for contempt under Count Three hereof.

Wm. M. West, Solicitor General, Macon Judicial Circuit.

Duly sworn to by Wm. M. West, jurat omitted in printing.

[fol. 36]

AN OPEN LETTER TO THE BIBB COUNTY GRAND JURY

Bibb County Grand Jury
February Term of Bibb Superior Court
Courthouse
Macon, Georgia

Gentlemen:

Pursuant to the request that the general public furnish to you information concerning "bloc voting" in this county, I wish to furnish you with the following information.

For many years, even for decades, our newspapers, law enforcement agencies, and courts have permitted a situation to develop in Bibb County which is so dangerous that I feel it imperative to call it to your attention at this time.

I refer, of course, to that gigantic "bloc vote" which is controlled by a handful of men known as The Bibb County Democratic Executive Committee. The situation in this county has so deteriorated that almost no one can obtain any local office without first securing the sanction and approval of this handful of people.

Accusations are made that large sums of money are paid in to this group of people in every election. Indeed, it is even alleged that a public official seeking re-election and who has no opposition, must nevertheless pay over hundreds upon hundreds of dollars to this group of leaders who control the democratic bloc vote in Bibb County. Ac- [fol. 37] cusations are further made that this group of leaders, known as the Bibb County Democratic Executive Committee, openly and notoriously violates the law of this State by soliciting the voters of this community on behalf of those nominees securing their approval. Reports further circulate that this small group of leaders receive money supposedly for the purpose of advertising, printing, etc., but no satisfactory explanation is ever made to the public of the means by which this organization is able, year after year, decade after decade, to control a mass vote in Bibb County.

Obviously, it is not in the best interest of the people of Bibb County to always deliver a bloc vote to the selectees of this group of political leaders in the community.

The Grand Jury should delve deeply into the means by which a select group in this community is able to brain wash the voting public so that the voters, like sheep, blindly vote for certain sponsored candidates of the Democratic Executive Committee. Certainly this most notorious and long existing bloc vote overshadows and overpowers any other sub bloc votes which may be under inquiry in the process of the current investigation.

I assure the members of the Grand Jury that my office at all times stands ready to fully cooperate with the Grand Jury in the gathering of evidence and I can further assure the Grand Jury that if it takes under advisement an in- [fol. 38] quiry into the gigantic democratic bloc vote in

this county, I will, personally, enter with great zeal into such an investigation on behalf of the Grand Jury.

s/ James I. Wood
Sheriff of Bibb County

EXHIBIT "D" TO AMENDMENT TO PETITION FOR CONTEMPT

STATEMENT

7-8-60

My defense will be simply that I have spoken the truth. Anyone who will read, point by point, my statements concerning the Judges' charge will find those statements true.

The Judges were wrong to use "Negro Bloc Voting", the campaign slogan of Talmadge, and similar phrases as language with which to instruct a Grand Jury. When I stated "It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office" was it contempt of court or was I pointing out the truth?

When I said "If anyone in this community be free of racial prejudice, it should be our Judges" was this contempt of Court or was I stating a truth?

The Judges were morally wrong to suddenly order a [fol. 39] Grand Jury to single out the Negro political leaders for indictments under a forgotten law which even judges have violated. When I said "It further seems that the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters" was this contempt of Court or was I speaking the truth?

The Judges were professionally wrong in involving the Court in political affairs. I stated that the Judges' charges "threaten political persecution carried out under the guise of law enforcement" and further that "this action appears either as a crude attempt at judicial intimidation of Negro voters and leaders, or, at best, as agitation for a 'Negro Vote' issues in local politics." Can anyone read the Judges'

instructions for indictments under the old "influencing voters" law and honestly say no political persecution is threatened when almost all office holders have violated this law? Can anyone read the long charge reciting political rumors and charges against Negro leaders and voters and honestly say there is no appearance of any attempt at intimidation of Negro voters and leaders? Likewise can anyone deny such a charge and such an investigation in the midst of local political races agitates a "Negro Vote" issue?

If the Court will permit I believe that many thousands of witnesses would testify in my behalf that they drew the [fol. 40] same conclusions as I from the language used by the Judges in their charge.

Is it just, or even fair play, for the Judges to say they intended no threat, no intimidation, no agitation and therefore it is contempt of court to publicly state honest, sincere conclusions and practical effects caused by the language of the charge.

Two wrongs do not make a right, and the Judges are wrong to cite me for contempt. I cannot view the Judges' action in any light except to believe I am to be prosecuted for daring to criticise the Judges and for speaking the truth.

I had hoped that the entire ill-will and race agitation stired up by the Judges' charge would be permitted to die after a face-saving presentment by the Courts' Grand Jury. To this end I remained silent despite grossly false and discrediting conclusions presented. Now it appears that the Judges want the satisfaction of find me in contempt of court, but if they so do, they are in effect saying that the court has done no wrong because the court itself finds it has done no wrong.

/s/ James I. Wood

[fol. 41] [File endorsement omitted]

IN THE SUPERIOR COURT OF BIBB COUNTY

CITATION FOR CONTEMPT—July 27, 1960

The foregoing amendment and citations for contempt of Court having been read and considered, the same is hereby allowed and ordered filed, subject to demurrer.

Ordered further that James I. Wood show cause at 10:00 A.M. on the 5th day of August, 1960, in the Bibb County Court House before the Judge of this Court then and there presiding why the prayers of this amendment should not be granted and why he should not be punished as for contempt of Court under all counts hereof.

It appearing to the Court that the Respondent is the duly elected and acting Sheriff of Bibb County, Georgia, it is ordered that a copy of this amendment, together with this Order, be served personally upon James I. Wood instanta (sic) by the Coroner of Bibb County, Georgia.

This 27th day of July, 1960.

A. M. Anderson, Judge, S. C. M. C.

[fol. 42]

IN THE SUPERIOR COURT OF BIBB COUNTY

DEMURRERS OF RESPONDENT—Filed August 5, 1960

Count One

Comes Now James I. Wood, respondent in the above captioned case, and, demurring to Count One of the citation for contempt, for grounds of demurrer says:

1. Respondent demurs generally to said Count of said citation generally on the ground that the same sets forth no ground for holding him in contempt of this Honorable Court.

2. Respondent demurs generally to said Count of said citation on the ground that the same, together with all of

its attached exhibits, affirmatively shows upon its very face that your respondent has committed no act or acts for which he could be convicted for a contempt of this Honorable Court.

[fol. 43] 3. Respondent demurs generally to said Count of said citation on the ground that the same fails to allege that any act or acts of his actually amounted to or accomplished an obstruction of the administration of justice, or that his act or acts formed a clear and present danger of obstructing the administration of justice.

4. Respondent demurs generally to said Count of said citation upon the ground that the same, together with its attached exhibits, fails to show that respondent did any act or acts which actually amounted to an obstruction of the administration of justice or which could have formed or created a clear and present danger of obstructing the administration of justice.

5. Respondent demurs generally to Count One of the citation on the ground that it fails to allege that the statement of respondent created a serious and eminent (sic) threat to the administration of justice; and, lacking this allegation, it is fatally defective.

6. Respondent demurs generally to Count One of the citation on the ground that the same, together with its attached exhibits, fails to show that the statement of respondent created a serious and eminent (sic) threat to the administration of justice; and, lacking such an allegation, it is fatally defective.

7. Respondent demurs generally to Count One of said citation on the ground that the same nowhere alleges that [fol. 44] the statements made by respondent were false or untrue; and, lacking such an allegation, said Count is fatally defective.

8. Respondent demurs generally to said Count of said citation on the ground that the same denies to him that liberty of speech guaranteed by the Constitution of the State of Georgia, the denial and deprivation of the right

of such freedom of speech being specified as in this ground of demurrer hereinafter set out.

Article 1, Section 1, paragraph 15 of the Constitution of the State of Georgia provides as follows:

No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty.

Respondent shows that the citation for contempt specifically seeks to deny to him the right of freedom of speech and the right to publish his sentiments on and concerning a matter which was and is political in nature and which was and is of great public interest, to-wit, an investigation into and concerning alleged infractions by a large group of citizens of the election laws of this State. Respondent avers that he had the right to express his sentiments upon said subject so long as the same was not in the presence of a Court or so near thereto, geographically, as to obstruct [fol. 45] the administration of justice; and this citation, seeking as it does, to abridge, infringe upon, or decimate that right is void as being in violation of and repugnant to said constitutional provision of the State of Georgia.

9. Respondent demurs generally to said Count of the citation for contempt upon the ground that the same amounts to an abridgment of the freedom of speech guaranteed to him by the Constitution of the United States, the provisions of said Constitution and the specific abridgments thereof are hereinafter spelled out in detail in this ground of demurrer.

Respondent shows that Section 1 of the Fourteenth Amendment to the Constitution of the United States provides as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Respondent shows that, pursuant to said quoted provision of the Constitution of the United States, one of the privileges and immunities and liberties of citizens of the United States is that freedom of speech guaranteed by the [fol. 46] First Amendment to the Constitution of the United States, said First Amendment of said Constitution providing as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The citation for contempt constitutes an abridgment of that freedom of speech guaranteed by the foregoing constitutional provisions of the United States in that it undertakes to convict respondent for a public utterance not made in the presence of a Court or so near thereto as to obstruct the administration of justice, and not amounting to an obstruction of justice, and not constituting a clear and present danger of obstructing the administration of justice. Respondent further shows that said citation does seek to abridge his right of freedom of speech guaranteed by the aforesaid provisions of the Constitution of the United States without even the formality of an allegation that his public utterances were in the presence of a Court or so near thereto as to obstruct the administration of justice or that said utterances did obstruct the administration of justice or that there was ever a clear and present danger of said utterances amounting to an obstruction of the administration of justice. Respondent therefore respectfully avers that said citation is violative of and repugnant to [fol. 47] said provisions of the Constitution of the United States, and is therefore an insufficient basis upon which to convict him for contempt of Court.

10. Respondent demurs generally to said Count of the citation on the ground that the same seeks to deny him an

equal protection of the laws in violation of the Constitution of the United States, this specific violations of the provision of the United States' Constitution guaranteeing equal protection of the laws being hereinafter spelled out in this ground of demurrer.

Respondent shows that the Fourteenth Amendment to the Constitution of the United States read as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Respondent shows that the citation for contempt seeks to deny him an equal protection of the laws in that it is an effort to hold him in contempt for an act or acts as the Sheriff of Bibb County, Georgia, which he, as an individual, would have an undisputed right to exercise. Respondent [fol. 48] shows that said citation, therefore, does seek to deny to a Sheriff those rights guaranteed to an ordinary citizen of the United States. Respondent respectfully avers that, whether Sheriff of Bibb County, Georgia, or not, he had the right to express himself upon a matter of public interest so long as the same was not done in the presence of the Court or so near thereto as to obstruct the administration of justice, and so long as his statement did not obstruct the administration of justice, and so long as no clear and present danger of the administration of justice arose from the making of his public statement; and respondent respectfully insists that an effort to deny to him his constitutional right of freedom of speech on the simple ground that he is Sheriff of Bibb County does, in effect, deny to him the equal protection of the laws, all in violation of said Fourteenth Amendment to the Constitution of the United States.

11. Respondent demurs generally to Count One of said citation on the ground that the act of the Judge in charging the Grand Jury was a non-judicial act as distinguished from a judicial act, and the criticism by respondent with respect thereto was, therefore, not such an act as could constitute a contempt of this Court.

12. Respondent demurs generally to Count One of the citation on the ground that it sets forth no ground for holding respondent in contempt for the reason that a Sheriff [fol. 49] has both the right and the duty, in the exercise of his executive functions, to determine what the public safety and tranquility demands; and said citation is void because it fails to negative in any way that respondent was performing such function.

13. Respondent demurs generally to said Count One of said citation on the ground that the same deprives him of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, said denial of said right being specified as is in this ground of demurrer hereinafter set out.

Respondent shows that Section 1 of the Fourteenth Amendment to the Constitution of the United States reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Said citation deprives him of due process of law in that it is proceeding to prosecute a matter concerning which this Court has no jurisdiction over the location where the alleged offense was committed or over the subject matter [fol. 50] itself; the location where the acts occurred being removed from the Courtroom itself, and the subject matter being an exercise of freedom of speech in issuing a public

statement. Hence, says respondent, the assumption of jurisdiction in the premises deprives him of due process of law.

14. Respondent demurs specially to paragraph 1 of said Count of the said citation and moves to strike the same from the citation on the ground that the allegation therein that he was at all times Sheriff of Bibb County is immaterial and irrelevant to any issue in the case; and the fact that respondent was Sheriff of Bibb County when he made a public utterance cannot, as a matter of law, render such utterance contemptuous if such utterance would not have been contemptuous if made by a person who was not Sheriff of Bibb County.

15. Respondent demurs specially to the allegation in paragraph 3 of said Count of said citation that the statement made by respondent was "disseminated to the general public" on the ground that said allegation is entirely irrelevant and immaterial to any issue in this case. Respondent says that said allegation should be stricken for the reason that a mere dissemination of information to the general public, whether such information touches a pending judicial proceeding or not, is not and cannot be a basis for holding respondent in contempt of this Court.

[fol. 51] 16. Respondent demurs specially to the first sentence in paragraph 4 of said Count One to the effect that the preparation, issuing and causing the statement to be published and circulated was in contempt of this Court on the ground that such an allegation is a conclusion of the pleader without sufficient facts upon which to base the same. Respondent shows that the pleader is not entitled to conclude that the mere publication of a statement concerning a pending judicial matter is in contempt of this Court.

Respondent demurs specially to the second sentence in said paragraph 4 which alleges that the statement was made in a course of action designed and calculated to be contemptuous of the Court and to ridicule the said investigation and to hamper, hinder, interfere with and obstruct

the Grand Jury and the Court in the investigation on the following grounds to-wit:

(a) Said allegation only alleges a thing which the respondent intended to do and does not allege that these intentions were in fact carried out, and a mere allegation of intentions without an allegation that the doings of the respondent did in fact ridicule the investigation and hamper, hinder, interfere with and obstruct the Grand Jury and the Court is entirely insufficient in law to form the basis of a citation for contempt.

(b) Respondent further demurs to said allegation on the ground that it fails to allege an actual obstruction of [fol. 52] justice or a clear and present danger of obstructing justice, so the same is insufficient in law to form the basis of a citation for contempt and is irrelevant and immaterial and should be stricken from the citation.

17. Respondent demurs specially to paragraph 5 of said Count on the ground that the allegation therein that the Grand Jury had not completed its investigation at the time the statement was made concerning the same is utterly irrelevant and immaterial to any issue in this case. Respondent says that whether or not the matter was still pending before the Grand Jury would not have any effect upon rendering his statement and utterance contemptuous. Respondent avers that he had the same right to make a statement about a pending proceeding as he would with reference to a proceeding which was not pending.

18. Respondent demurs specially to paragraph 6 of the first Count of the citation on the ground that the allegation therein that the office from which respondent issued his statement was in the same building as the Courtroom and the Grand Jury Room is utterly irrelevant and immaterial and is not germane to any issue in this case. Respondent points out that said allegation does not show the geographical nearness of the Sheriff's Office to the other two offices mentioned and it does not allege that any action in the Sheriff's Office was so near to the Courtroom as to [fol. 53] obstruct the administration of justice. Hence, the

allegations of paragraph 6 are immaterial and irrelevant and should be stricken from the citation.

19. Respondent demurs specially to paragraph 7 of the first Count of the citation on the ground that the allegation therein that the statement issued by respondent imputed a lack of judicial integrity to the Judges of Superior Court is a conclusion of the pleader in that it does not state how or in what manner the statement imputed any lack of judicial integrity to said Judges.

Respondent demurs specially to said paragraph 7 of said Count for the further reason that it does not allege that the imputation of lack of judicial integrity in any way obstructed justice or created a clear and present danger of an obstruction of justice or was a serious and eminent (sic) threat to the administration of justice. Respondent avers that without the allegation that this imputation obstructed justice or formed a clear and present danger of an obstruction of justice or that it created a serious and eminent (sic) threat to the administration of justice it is immaterial and irrelevant and forms no basis for a citation for contempt and should be stricken from the citation.

Wherefore, respondent prays that these his demurrers be inquired into by the Court; that the same be sustained; and that the citation for contempt be quashed and dismissed.

* * * * *

[fol. 65] Count Three

Comes Now James I. Wood, respondent in the above captioned case, and, demurring to Count Three of the citation for contempt, for grounds of demurrer says:

1. Respondent demurs generally to said Count of said citation generally on the ground that the same sets forth no ground for holding him in contempt of this Honorable Court.

2. Respondent demurs generally to said Count of said citation on the ground that the same, together with all of [fol. 66] its attached exhibits, affirmatively shows upon its

very face that your respondent has committed no act or acts for which he could be convicted for a contempt of this Honorable Court.

3. Respondent demurs generally to said Count of said citation on the ground that the same fails to allege that any act or acts of his actually amounted to or accomplished an obstruction of the administration of justice, or that his act or acts formed a clear and present danger of obstructing the administration of justice.

4. Respondent demurs generally to said Count of said citation upon the ground that the same, together with its attached exhibits, fails to show that respondent did any act or acts which actually amounted to an obstruction of the administration of justice or which could have formed or created a clear and present danger of obstructing the administration of justice.

5. Respondent demurs generally to Count Three of the citation on the ground that it fails to allege that the statement of respondent created a serious and eminent (sic) threat to the administration of justice; and, lacking this allegation, it is fatally defective.

6. Respondent demurs generally to Count Three of the citation on the ground that the same, together with its attached exhibits, fails to show that the statement of respondent created a serious and eminent (sic) threat to the [fol. 67] administration of justice; and, lacking such an allegation, it is fatally defective.

7. Respondent demurs generally to Count Three of said citation on the ground that the same nowhere alleges that the statements made by respondent were false or untrue; and, lacking such an allegation, said Count is fatally defective.

8. Respondent demurs generally to said Count of said citation on the ground that the same denies to him that liberty of speech guaranteed by the Constitution of the State of Georgia, the denial and deprivation of the right of such freedom of speech being specified as in this ground of demurrer hereinafter set out.

Article 1, Section 1, paragraph 15 of the Constitution of the State of Georgia provides as follows:

No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty.

Respondent shows that the citation for contempt specifically seeks to deny to him the right of freedom of speech and the right to publish his sentiments on and concerning a matter which was and is political in nature and which was and is of great public interest, to-wit, an investigation into and concerning alleged infractions by a large group of citizens of the election laws of this State. Respondent [fol. 68] avers that he had the right to express his sentiments upon said subject so long as the same was not in the presence of a Court or so near thereto, geographically, as to obstruct the administration of justice; and this citation, seeking as it does, to abridge, infringe upon, or decimate that right is void as being in violation of and repugnant to said constitutional provision of the State of Georgia.

9. Respondent demurs generally to said Count of the citation for contempt upon the ground that the same amounts to an abridgment of the freedom of speech guaranteed to him by the Constitution of the United States, the provisions of said Constitution and the specific abridgments thereof are hereinafter spelled out in detail in this ground of demurrer.

Respondent shows that Section 1 of the Fourteenth Amendment to the Constitution of the United States provides as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Respondent shows that, pursuant to said quoted provi- [fol. 69] sion of the Constitution of the United States, one of the privileges and immunities and liberties of citizens of the United States is that freedom of speech guaranteed by the First Amendment to the Constitution of the United States, said First Amendment of said Constitution providing as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The citation for contempt constitutes an abridgment of that freedom of speech guaranteed by the foregoing constitutional provisions of the United States in that it undertakes to convict respondent for a public utterance not made in the presence of a Court or so near thereto as to obstruct the administration of justice, and not amounting to an obstruction of justice, and not constituting a clear and present danger of obstructing the administration of justice. Respondent further shows that said citation does seek to abridge his right of freedom of speech guaranteed by the aforesaid provisions of the Constitution of the United States without even the formality of an allegation that his public utterances were in the presence of a Court or so near thereto as to obstruct the administration of justice or that said utterances did obstruct the administration of [fol. 70] justice or that there was ever a clear and present danger of said utterances amounting to an obstruction of the administration of justice. Respondent therefore respectfully avers that said citation is violative of and repugnant to said provision of the Constitution of the United States, and is therefore an insufficient basis upon which to convict him for contempt of Court.

10. Respondent demurs generally to said Count of the citation on the ground that the same seeks to deny him an equal protection of the laws in violation of the Constitution of the United States, this specific violation of the provision of the United States' Constitution guaranteeing equal

protection of the laws being hereinafter spelled out in this ground of demurrer.

Respondent shows that the Fourteenth Amendment to the Constitution of the United States reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Respondent shows that the citation for contempt seeks to deny him an equal protection of the laws in that it is [fol. 71] an effort to hold him in contempt for an act or acts as the Sheriff of Bibb County, Georgia, which he, as an individual, would have an undisputed right to exercise. Respondent shows that said citation, therefore, does seek to deny to a Sheriff those rights guaranteed to an ordinary citizen of the United States. Respondent respectfully avers that, whether Sheriff of Bibb County, Georgia, or not, he had the right to express himself upon a matter of public interest so long as the same was not done in the presence of the Court or so near thereto as to obstruct the administration of justice, and so long as his statement did not obstruct the administration of justice, and so long as no clear and present danger of the administration of justice arose from the making of his public statement; and respondent respectfully insists that an effort to deny to him his constitutional right of freedom of speech on the simple ground that he is Sheriff of Bibb County does, in effect, deny to him the equal protection of the laws, all in violation of said Fourteenth Amendment to the Constitution of the United States.

11. Respondent demurs generally to Count Three of said citation on the ground that the act of the Judge in charging the Grand Jury was a non-Judicial act as distinguished from a judicial act, and the criticism by respon-

dent with respect thereto was, therefore, not such an act as could constitute a contempt of this Court.

[fol. 72] 12. Respondent demurs generally to Count Three of the citation on the ground that it sets forth no ground for holding respondent in contempt for the reason that a Sheriff has both the right and the duty, in the exercise of his executive functions, to determine what the public safety and tranquility demands; and said citation is void because it fails to negative in any way that respondent was performing such function.

13. Respondent demurs generally to said Count Three of said citation on the ground that the same deprives him of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, said denial of said right being specified as is in this ground of demurrer hereinafter set out.

Respondent shows that Section 1 of the Fourteenth Amendment to the Constitution of the United States reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[fol. 73] Said citation deprives him of due process of law in that it is proceeding to prosecute a matter concerning which this Court has no jurisdiction over the location where the alleged offense was committed or over the subject matter itself; the location where the acts occurred being removed from the Courtroom itself, and the subject matter being an exercise of freedom of speech in issuing a public statement. Hence, says respondent, the assumption of jurisdiction in the premises deprives him of due process of law.

14. Respondent demurs specially to paragraph 1 of said Count of said citation and moves to strike the same from the citation on the ground that the allegation therein that he was at all times Sheriff of Bibb County is immaterial and irrelevant to any issue in the case; and the fact that respondent was Sheriff of Bibb County when he made a public utterance cannot, as a matter of law, render such utterance contemptuous if such utterance would not have been contemptuous if made by a person who was not Sheriff of Bibb County.

15. Respondent demurs specially to the allegation in paragraph 3 of said Count on the ground that the allegation that respondent "appeared" is too vague and indefinite to show where he appeared from or to whom he appeared.

Respondent demurs further to said paragraph 3 of said Count on the ground that the allegation therein that the Court House Grand Jury Room, and Sheriff's Office are [fol. 74] in the same building is irrelevant and immaterial to any issue in the case and is too vague and indefinite to show any geographical connection between said offices.

Respondent demurs further to said paragraph of said citation on the ground that the allegation therein that he caused the statement to be disseminated to the general public is entirely irrelevant and immaterial to any issue in this case. Respondent says that said allegations should be stricken for the reason that a mere dissemination of information to the general public, whether such information touches a pending judicial proceeding or not, is not and cannot be a basis for holding respondent in contempt of this Court.

16. Respondent demurs specially to the allegation in paragraph 4 of said Count to the effect that respondent caused the statement to be disseminated to the general public on the ground that a mere dissemination of information to the general public does not constitute a contempt of Court whether it concerns a pending judicial matter or not.

17. Respondent demurs specially to paragraph 5 of said Count on the ground that the allegation therein that th

Grand Jury had not completed its investigation at the time the statement was made concerning the same is utterly irrelevant and immaterial to any issue in this case. Respon- [fol. 75] dent says that he had the same right to make a statement concerning a pending case as he did concerning a case which was not pending.

18. Respondent demurs specially to the first sentence of paragraph 6 of said Count on the ground that the same is a mere conclusion of the pleader and it states an erroneous conclusion of law.

Respondent demurs further to the second sentence of said paragraph of said count on the ground that, in the manner pleaded, it is immaterial and irrelevant to any issue in this case. Said sentence only alleges what respondent intended, designed, and calculated to accomplish, but it utterly fails to allege that his objections were ever accomplished. Said allegation is insufficient to form the basis of a citation for contempt.

19. Respondent demurs specially to paragraph 7 of said Count and says that the same should be stricken because it is insufficient to serve as a basis of a citation for contempt.

Respondent demurs further to said paragraph of said count on the ground that it only pleads an effort on his part to deter the Court from a dispassionate hearing of the case; and a failure to allege that these efforts were successful and that they contributed in some way to an obstruction of justice leaves them devoid of legal import and of no force or effect.

Respondent further demurs specially to said paragraph [fol. 76] of said Count on the ground that the allegation therein that respondent's statement amounted to an interference in a pending case is a conclusion of the pleader in that it fails to state how, when, or in what manner the pending case was interfered with; and the allegation that the orderly processes of the Court were interfered with is likewise a mere conclusion because no facts are alleged to show what processes were interfered with or how any processes were interfered with.

Respondent further demurs specially to said paragraph of said Count on the ground that the allegation therein that the acts of respondent constitute an effort to obstruct justice is immaterial and irrelevant and should be stricken. Respondent says that a mere effort to obstruct justice which falls short of actually obstructing justice is not a contempt of Court.

Wherefore, respondent prays that these his demurrers be inquired into by the Court; that the same be sustained; and that Count Three of the citation be dismissed.

Edward F. Taylor, Charles F. Adams, H. T. O'Neal, Jr., Charles Wood.

[File endorsement omitted]

[fol. 77]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

RESPONSE OF JAMES I. WOOD—Filed August 5, 1960

Comes Now James I. Wood, respondent in the above captioned case, and files this his response to the citation for contempt:

1. Respondent admits the allegations of paragraph 1 of the citation.

2. Respondent admits the allegations of paragraph 2 of the citation.

3. Respondent admits paragraph 3 of the citation.

4. Respondent denies paragraph 4 of the citation in toto and he denies each and every allegation therein.

[fol. 78] 5. Respondent admits paragraph 5 of the citation.

6. Respondent admits the allegations of paragraph 6 of the citation.

7. Respondent denies paragraph 7 of the citation.

8. Respondent, for further answer, says that the public statement attributed to him by Count 1 of this citation was made by him as an individual and as a citizen of the State of Georgia and of the United States; and he shows that said statement was not made by him in his official capacity as Sheriff of Bibb County or as an officer of Bibb Superior Court; and he shows further that said public utterance was not a part of any official transaction of his as Sheriff of Bibb County or as an officer of the Superior Court of Bibb County.

9. Respondent shows that at the time the Grand Jury of Bibb County was charged concerning alleged bloc voting in local elections a campaign was actually in progress between many contestants for nomination to a number of offices in the Bibb County democratic primary election which was scheduled for July 20, 1960. Respondent shows that he was directly interested in the outcome of said election not only as a private citizen but also as one who was an announced candidate for public office in the general election to be held in November, 1960, and in which election respondent would be running against some contestant who prevailed in said democratic primary. Respondent felt [fol. 79] and believed that the language which was employed in the charge to the Grand Jury was of such a nature that it tended to create or emphasize issues likely to have a drastic impact upon the outcome of said democratic primary.

10. Respondent, for further answer, shows that his purpose in issuing the public statement was simply to appraise the general public of what respondent verily and sincerely believed to be the other side of the issue created by the charge of the Grand Jury.

11. Respondent, for further answer, says that the statement issued by him was not calculated, designed, or intended to be contemptuous of the Court nor was it intended to hinder any investigation or obstruct the administration of justice in any way.

12. Respondent, for further answer, respectfully shows that his statement was not uttered in the presence of a Court or so near thereto as to obstruct the administration of justice, nor did his statement in any way obstruct the administration of justice or create a clear and present danger of obstructing the administration of justice.

13. Respondent, for further answer, shows that his statement was merely one made concerning a matter of great public interest, and, in so doing, he was in the exercise [fol. 80] of the liberty of speech guaranteed to him by Article 1, Section 1, paragraph 15 of the Constitution of the State of Georgia, which is as follows:

2-115. Liberty of speech or of the press guaranteed.—No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty.

Respondent shows that the citation for contempt specifically seeks to deny to him the right of freedom of speech and the right to publish his sentiments on and concerning a matter which was and is political in nature and which was and is of great public interest, to-wit: an investigation into and concerning alleged infraction by a large group of citizens of the election laws of this state.

Respondent avers that he had the right to express his sentiments upon said subject so long as the same was not in the presence of a court or so near thereto, geographically, as to obstruct the administration of justice; and this citation, seeking as it does, to abridge, infringe upon, or decimate that right is void as being in violation of and repugnant to said constitutional provision of the State of Georgia, aforesaid.

14. For further answer respondent shows that his statement was merely one made concerning a matter of great public interest, and in so doing, he was in the exercise [fol. 81] of the liberty of speech guaranteed to him by the Fourteenth amendment of the Constitution of the United States of America, which is as follows:

1-815. Citizenship. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . . and as provided in the First Amendment to the Constitution of the United States of America, which is as follows:

1-801. Rights of conscience; freedom of the press, etc. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Respondent shows that the citation for contempt specifically seeks to deny to him the right of freedom of speech and the right to publish his sentiments on and concerning a matter which was and is political in nature and which was and is of great public interest to-wit; an investigation [fol. 82] into and concerning alleged infraction by a large group of citizens of the election laws of this State.

Respondent avers that he had the right to express his sentiments upon said subject so long as the same was not in the presence of a court or so near thereto, geographically, as to obstruct the administration of justice; and this citation, seeking as it does, to abridge, infringe upon, or decimate that right is void as being in violation of and repugnant to said Constitutional provisions of the United States of America, aforesaid.

15. Respondent, for further answer, says that prior to the delivery of the charge to the Grand Jury, referred to in the citation for contempt, the local press had been notified to have reporters present in the Bibb Superior Court room at the time set for the charge to the Grand Jury.

Respondent shows that following the charge to the Grand Jury, in the court room, there was available for distribu-

tion to news reporters typewritten copies of the complete text of said charge, such copies being distributed in the Offices of the Judges in Bibb County Court House.

Respondent shows that he adopted the same media for dissemination of his views, on the same subject, to the general public.

Wherefore, respondent respectfully prays that the contempt citation be discharged.

* * * * * * *

[fol. 88] Count Three

Comes Now James I. Wood, and answering Count Three of the citation, for answer says:

1. Respondent admits paragraphs 1, 2, 3, 4, and 5 of the citation.

2. Respondent denies paragraphs 6 and 7 of the citation.

3. Respondent adopts in its entirety paragraph 8 of his response to Count One as this paragraph of his response to this Count.

4. Respondent adopts in its entirety paragraph 9 of his response to Count One as this paragraph of his response to this Count.

5. Respondent adopts in its entirety paragraph 10 of his response to Count One as this paragraph of his response to this Count.

6. Respondent adopts in its entirety paragraph 11 of his response to Count One as this paragraph of his response to this Count.

[fol. 89] 7. Respondent adopts in its entirety paragraph 12 of his response to Count One as this paragraph of his response to this Count.

8. Respondent adopts in its entirety paragraph 13 of his response to Count One as this paragraph of his response to this Count.

9. Respondent adopts in its entirety paragraph 14 of his response to Count One as this paragraph of his response to this Count.

10. Respondent adopts in its entirety paragraph 15 of his response to Count One as this paragraph of his response to this Count.

Wherefore, respondent having fully answered, he prays that he be discharged.

Edward F. Taylor, Charles F. Adams, H. T. O'Neal, Jr., Charles Wood, Attorneys for Respondent.

[fol. 91]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

FURTHER AMENDMENTS TO PETITION FOR CONTEMPT—
August 10, 1960

Comes now William M. West, Solicitor General of the Macon Judicial Circuit, acting under the law and pursuant to his duty, and on behalf of the State of Georgia, and by leave of the Court, amends his petition as heretofore amended and adds thereto additional paragraphs to each of the three counts in the Citation for Contempt and shows to the court the following:

Additional Amendment to Count 1.

8. The Respondent, James I. Wood, Sheriff of Bibb County, is a full-time employee of the County of Bibb and is paid a salary for his services as such officer. Respondent is an officer of the Bibb Superior Court.

9. That at the time Respondent issued, published and caused to be published the statement (Exhibit "B") as set forth in paragraph 3 of the original petition, the Grand Jury had before them records and documents relating to primaries and elections in which Respondent had taken an active part, both as a candidate and as an active sup-

porter of a candidate, and the said Grand Jury had been charged to investigate said elections.

10. That the said statement (Exhibit "B") was brought to the attention of the Judges of the Bibb Superior Court [fol. 92] and to the attention of the members of said Grand Jury as a result of the publication of said statement (Exhibit "B") by the various news media referred to in paragraph 3 of the original petition.

That said statement (Exhibit "B") as so published was actually read by members of the said Grand Jury while they were engaged in the investigation of the matters about which the Court had charged them.

11. The issuing, publishing and causing to be published the said statement (Exhibit "B") by Respondent, Sheriff of Bibb County as set out in paragraph 3 of the original petition, in and of itself created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury into the matters about which it had been instructed by the Court, and further presented a clear, present and imminent danger to the proper administration of justice in Bibb Superior Court.

* * * * * * *

[fol. 95] Amendment to Count 3

8. The Respondent, James I. Wood, Sheriff of Bibb County, is a full-time employee of the County of Bibb and is paid a salary for his services as such officer. Respondent is an officer of the Bibb Superior Court.

9. The issuing, publishing and causing to be published the said statement (Exhibit "D") by Respondent, Sheriff of Bibb County, as set out in paragraph 4 of Count 3 in and of itself created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury into the matters about which it had been instructed by the Court, and further presented a clear, present and imminent danger to the proper administration of justice in the Bibb Superior Court of the proper handling of the contempt citation against Respondent,

which citation was then and there pending in the Bibb Superior Court.

10. The published statement (Exhibit "D") was actually read by members of the Grand Jury while they were continuing their investigation of the matters about which they had been charged and was actually read by Judges of the Bibb Superior Court.

11. That the published statement (Exhibit "D") was a course of action by Respondent designed and calculated to hinder, interfere with and ridicule the said Grand Jury in continuing its investigation of the matters about which the Court had charged the Grand Jury and thus in and [fol. 96] of itself, presented and created a clear, present and imminent danger to the proper investigation and the proper conduct of the business of the Bibb County Grand Jury.

Wherefore, petitioner prays that this amendment be allowed as to each of the three counts of the citation for contempt and that all of the prayers of the petition for contempt in each of the three counts thereof be granted, and that the Respondent be served with a copy of this amendment in accordance with law.

Wm. M. West, Solicitor General, Macon, Judicial Circuit.

Duly sworn to by Wm. M. West, jurat omitted in printing.

[fol. 110] [File endorsement omitted]

IN THE SUPERIOR COURT OF BIBB COUNTY

ORDER OVERRULING DEMURRERS—August 12, 1960

The demurrers in the above captioned matter have regularly come on to be heard on August 5, 1960, and argument from counsel for both sides having been heard, and the citation having been amended subsequent to said hearing, and the demurrers having been renewed and additional demurrers having been filed to said citation as amended,

and said renewed and additional demurrers having this day been argued;

It Is, Upon Consideration, Ordered and Adjudged, that each and every demurrer to each and every count of said citation be, and the same is, hereby *overruled*.

So ordered, this 12th day of August, 1960.

A. M. Anderson, J. S. C. M. C.

[fol. 112]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

STIPULATION OF FACTS—August 12, 1960

The following constitutes stipulations of fact between the parties in the above-captioned proceeding:

1. That James I. Wood is Sheriff of Bibb County and is paid a salary by Bibb County for his services as Sheriff.

2. That at the time Respondent released to local news media his statement (Exhibit B) and delivered his "Open Letter to the Bibb County Grand Jury" (Exhibit C), the Grand Jury had before them voting tabulations and other documents, including endorsements by certain political groups, relating to primaries and elections in which Respondent actively participated as a candidate for public office and as an active supporter for a candidate.

3. That the Judges of Bibb Superior Court read the statement (Exhibit B), the letter (Exhibit C) and the statement (Exhibit D) as set forth in the citation as amended, and were aware of the wide public circulation given thereto by the various news media.

4. Members of the Bibb County Grand Jury, during the course of its investigation about the matters they were charged to investigate, read the statement (Exhibit B), the letter (Exhibit C) and the statement (Exhibit D), as set forth in the citation as amended, and were aware of

[fol. 113] the wide public circulation given thereto by the various news media.

5. On the morning of June 8, 1960, while the full Grand Jury was in session investigating the matters about which it had been charged by the Court, the Respondent, James I. Wood, handed to the Bailiff of the Grand Jury the "open letter" (Exhibit C) with the request that said letter be handed to the Foreman of the Grand Jury, and the Bailiff of the Grand Jury delivered to the Solicitor General the letter identified as Exhibit "C", with the request that it be delivered to the Foreman of the Grand Jury and the Solicitor General did hand said letter (Exhibit C) to the Foreman of the Grand Jury without reading the contents thereof. At the time the said letter was delivered to the Foreman of the Grand Jury, the Grand Jury itself was actually engaged in its investigation of the matters about which it had been charged by the Court. After receiving said letter (Exhibit C), it was read to the Grand Jury by the Foreman and its contents were discussed by members of the Grand Jury. The total time consumed in reading and discussing said letter (Exhibit C) was about ten minutes of the time of the Grand Jury. Following this, the Grand Jury called further witnesses who were waiting during the time consumed in reading and considering said letter (Exhibit C) and resumed its investigation.

6. The Bibb County Democratic Executive Committee are elected officials of the Bibb County Democratic Party [fol. 114] and are charged with the responsibility of fixing rules and regulations governing the holding of Democratic Primary elections within Bibb County, the supervising and conducting of same, the certifying to the proper officials the results of each primary elections and fixing the entrance fees for candidates in Democratic Primary elections, collecting the same from candidates who qualify with the Committee as candidates, and from the fees collected from candidates defrays the expense of holding Democratic Primary elections within Bibb County.

So stipulated this 12th day of August, 1960.

E. F. Taylor, C. F. Adams, H. T. O'Neal, Jr., Attorneys of Record for Respondent.

Wm. M. West, Attorney of Record for the State.

Approved and ordered filed This August 13, 1960.
A. M. Anderson, Judge S. C. M. C.

Filed in Office This 13th day of August, 1960.
Carolyn DeLoach, Dep. Clerk.

[fol. 115]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

STIPULATION RE SWORN RESPONSE—August 12, 1960

It is stipulated that the Respondent offered in evidence his sworn response filed in this matter on August 5, 1960, for the Court to consider as Respondent's evidence all of the legally admissible statements of fact contained therein, and that the Court admitted same as tendered.

So stipulated this 12th day of August, 1960.

E. F. Taylor, C. F. Adams, H. T. O'Neal, Jr., Attorneys of Record for Respondent.

Wm. M. West, Attorney of Record for the State.

Approved and ordered filed this August 13, 1960.
A. M. Anderson, Judge S. C. M. C.

Filed in Office this 13th day of August, 1960.
Carolyn DeLoach, Deputy Clerk.

[fol. 116]

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA,

VS.

JAMES I. WOOD.

JUDGMENT—August 13, 1960

Count One

The Attachment for Contempt of Court under Count One, as amended, in the captioned proceeding having come on regularly for hearing and trial and after regular hearing and trial thereof and after consideration by the Court of the law and all of the evidence and arguments of counsel, the defendant, James I. Wood, is hereby found guilty of Contempt of Court under Count One;—

It Is, Therefore, the Order and Judgment of This Court as to Count One that the said James I. Wood be confined in the common jail of Bibb County for a term of twenty (20) days, to be computed from August 23, 1960; and that he pay into Court a fine of two hundred ($200.00) dollars; and that he pay one-third (⅓) of the total costs in the captioned proceeding, to be taxed by the Clerk of this Court. The Clerk of this Court is hereby directed to issue an execution for the said fine and Court costs.

Count Two

The Attachment for Contempt of Court under Count Two, as amended, in the captioned proceeding having come on regularly for hearing and trial and after regular hearing and trial thereof and after consideration by the Court of the law and all of the evidence and arguments of counsel, [fol. 117] the defendant, James I. Wood, is hereby found guilty of Contempt of Court under Count Two;—

It Is, Therefore, the Order and Judgment of This Court as to Count Two that the said James I. Wood be confined in the common jail of Bibb County for a term of twenty (20) days, to be computed from August 23, 1960; and that he pay into Court a fine of two hundred ($200.00) dollars; and that he pay one-third (1/3) of the total costs in the captioned proceeding, to be taxed by the Clerk of this Court. The Clerk of this Court is hereby directed to issue an execution for the said fine and court costs.

Count Three

The Attachment for Contempt of Court under Count Three, as amended, in the captioned proceeding having come on regularly for hearing and trial and after regular hearing and trial thereof and after consideration by the Court of the law and all of the evidence and arguments of counsel, the defendant, James I. Wood, is hereby found guilty of Contempt of Court under Count Three:—

It Is, Therefore, the Order and Judgment of This Court as to Count Three that the said James I. Wood be confined in the common jail of Bibb County for a term of twenty (20) days, to be computed from August 23, 1960; and that he pay into Court a fine of two hundred ($200.00) dollars; and that he pay one-third (1/3) of the total costs in the captioned proceeding, to be taxed by the Clerk of this Court. The Clerk of this Court is hereby directed to issue an [fol. 118] execution for the said fine and court costs.

Ordered further that the effective date of the sentences of this Court as to Counts One, Two and Three, shall be 10:00 A.M., August 23, 1960, in order that the defendant might have ample opportunity, if he so desires, to make a formal written motion for stay of this Order and Judgment pending appeal.

Ordered further that the jail sentences herein imposed under Counts One, Two and Three shall be served concurrently.

It is the further order and direction of this Court that the Coroner of Bibb County execute this Order and Judgment in accordance with the terms thereof.

So Ordered in Open Court, this 13th day of August, 1960.

A. M. Anderson, Judge, Superior Courts, Macon Judicial Circuit.

[File endorsement omitted]

[fol. 121]

IN THE COURT OF APPEALS OF GEORGIA

Case Number 38574

WOOD,

v.

STATE OF GEORGIA.

OPINION

By the Court:

1. The trial court did not err in finding the defendant in contempt under count 1 of the indictment.

(a) The constitutional courts of this state are not limited by the definition of contempts in Code § 24-105, and may go beyond the provisions of the statute in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly invade them.

(b) The grand jury is a constituent part of the court, and anyone whose conduct interferes with, or has a tendency to obstruct the grand jury, or endeavors to interfere with the performance of its duties may be found in contempt.

(c) The principles stated in headnote 3 also are appropriate to division 1 of the opinion.

2. The trial court erred in convicting the defendant on count 2 of the indictment for contempt.

3. (a) The trial court did not err in its conviction of the defendant on the third count of the citation for contempt.

(b) The success or failure of an attempt to interfere with the administration of justice is not a test of whether or not there is a contempt, since it can not be known what effect, if any, the attempt may have had.

(c) The truth or falsity of statements made in an attempt [fol. 122] to obstruct or impair the administration of justice is irrelevant and, if contemptuous, such statements may be punished as a contempt.

(d) Punishment for contempt of court is not prevented by the constitutional guaranty of freedom of speech (Code § 2-115) since contempt of court is an abuse of the liberty of speech.

(e) The due process, freedom of speech, and equal protection clauses of the Constitution of the United States do not bar punishment for contempt of court.

(f) The act of the judge in charging the grand jury with its duties is a judicial act, and an improper interference therewith may be found to be contempt of court.

(g) The lack of criminal intent or the presence of good faith will not bar a conviction for contempt of court.

(h) Punishment for contempt of court is not a denial of due process of law.

(i)-(k) The remaining of seventy-five demurrers are considered and disposed of in the opinion.

(l) Intemperate and repeated attacks upon the motives, judgment, and alleged biases of the judge which allegedly led him to charge the grand jury to make certain investigations, and which attacks could have had the effect of interfering with or diverting the attention of the grand jury [fol. 123] from its assigned duties, may properly be found to be contempt of court.

(m) The principles stated in headnote 1 also are appropriate to division 3 of the opinion.

The defendant, at the time Sheriff of Bibb County, Georgia, was cited for and convicted of contempt of court by the Superior Court of Bibb County, Georgia. The facts

out of which the contempt citation arose were as follows: On June 6, 1960, the opening day of the June term, 1960, of the Bibb Superior Court, Judge Long charged the grand jury, which had been regularly impaneled and sworn for the term of court, giving them special instructions which were joined in by the other two judges of that court, advising the grand jury that a situation had arisen in the county which the court felt should be thoroughly and completely investigated by the grand jury. In this charge the jury was advised that there appeared to be an inane and inexplicable pattern of Negro bloc voting. The charge went on to point out that accusations had been made that candidates for public office had paid large sums of money to certain leaders in an effort to gain their favor and to obtain the Negro vote, and that there were also accusations that certain Negro leaders, after having met with a candidate and endorsed his candidacy, have changed and supported an opposing candidate who put up a large sum of money, and that this creates an unhealthy, dangerous, and unlawful situation which tends to corrupt public office holders and [fol. 124] some candidates for public office. The charge went on to point out the violations of law which would be involved should the grand jury find these charges to be founded in truth. The charge cited Code § 34-9907, which provides, in part, that if any person shall buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof such person shall be guilty of a misdemeanor. Code Ann. § 34-1907.1 also was cited. This section reads, "No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting." The charge went on to instruct the jury that, if money is furnished to any person or group of persons for the purpose of hiring people qualified to vote to canvass other voters in an effort to influence their votes in behalf of any candidate, this would be a violation

of law and against the public policy of the State. Certain questions were posed to the jury which it was to investigate in inquiring into these charges of violations of election laws.

The next day, while the grand jury was in session and actually engaged in investigating the matters set forth in the charge by the court, the defendant prepared and [fol. 125] issued a written statement which was by him and under his direction on that day released to local news media, causing the contents of this statement to be published and disseminated to the general public. At the time this "news release" was made, the grand jury had before them voting tabulations and other documents, including endorsements by certain political groups, relating to primaries and elections in which the defendant actively participated as a candidate for public office and as an active supporter of a candidate. It was stipulated between the solicitor-general and the defendant that the judges of the superior court read the statement, and also that members of the Bibb County grand jury, during the course of its investigation about the matters they were charged to investigate, read the news release of the defendant, his "An Open Letter to the Bibb County Grand Jury," and a further statement which the defendant made on July 8th after he was cited for contempt of court. The "Open Letter to the Bibb County Grand Jury" was signed by the defendant with the title, "Sheriff of Bibb County." The news release of June 7th and the statement of July 8th were signed by him without the addition of the caption, "Sheriff of Bibb County."

The news release of June 7th stated:

"The people of Bibb County should take notice when their highest judicial officers threaten political persecution carried out under the guise of law enforcement.

[fol. 126] "Whatever the Judges' intention, the action of the Superior Court Judges ordering a Bibb County Grand Jury to investigate 'negro block voting' will be considered one of the most deplorable examples of race agitation to come out of Middle Georgia in recent years.

"At a time when all thinking people want to preserve the good will and cooperation between the races in Bibb County,

this action appears either as a crude attempt at judicial intimidation of negro voters and leaders, or, at best, as agitation for a 'negro vote' issue in local politics.

"No one would question the duty of a Grand Jury to investigate any and all election law violations. However, simple justice would demand that the Judge not single out the negro people for particular investigation. If we seriously wish to enforce the old law against hiring workers for canvassing or influencing voters, then let us start by indicting our U. S. Senators, Congressmen, and Governors and almost all elected State officials.

"If we overlook the mountain of white candidates and campaign workers who have violated this old law, to investigate the mole hill of few negro campaign workers, then truly we are manipulating the law in a manner to persecute the few.

"This is the type of political-legal action which brings down ridicule and demands for civil right legislation against the South.

[fol. 127] "Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

"It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the negro people in this community.

"It seems incredible that all three of our Superior Court Judges, who themselves hold high political office, are so politically nieve [naive?] as to actually believe that the negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some negro leaders.

"If anyone in the community be free of racial prejudice, it should be our Judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office.

"It further seems the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters.

"However politically popular the judges' action may be at this time, they are employing a practice far more dan-

gerous to free elections than anything they want investigated."

The "Open Letter to the Grand Jury" read as follows:

[fol. 128] "Pursuant to the request that the general public furnish to you information concerning 'bloc voting' in this county, I wish to furnish you with the following information.

"For many years, even for decades, our newspapers, law enforcement agencies, and courts have permitted a situation to develop in Bibb County which is so dangerous that I feel it imperative to call it to your attention at this time.

"I refer, of course, to that gigantic 'bloc vote' which is controlled by a handful of men known as The Bibb County Democratic Executive Committee. The situation in this county has so deteriorated that almost no one can obtain any local office without first securing the sanction and approval of this handful of people.

"Accusations are made that large sums of money are paid in to this group of people in every election. Indeed, it is even alleged that a public official seeking re-election and who has no opposition, must nevertheless pay over hundreds upon hundreds of dollars to this group of leaders who control the democratic bloc vote in Bibb County. Accusations are further made that this group of leaders, known as the Bibb County Democratic Executive Committee, openly and notoriously violates the law of this State by soliciting the voters of this community on behalf of those nominees securing their approval. Reports further circulate that this small group of leaders receive money supposedly for the purpose of advertising, printing, etc., [fol. 129] but no satisfactory explanation is ever made to the public of the means by which this organization is able, year after year, decade after decade, to control a mass vote in Bibb County.

"Obviously, it is not in the best interest of the people of Bibb County to always deliver a bloc vote to the selectees of this group of political leaders in the community.

"The Grand Jury should delve deeply into the means by which a select group in this community is able to brain wash the voting public so that the voters, like sheep, blindly

bloc vote for certain sponsored candidates of the Democratic Executive Committee. Certainly this most notorious and long existing bloc vote overshadows and overpowers any other sub bloc of votes which may be under inquiry in the process of the current investigation.

"I assure the members of the Grand Jury that my office at all times stands ready to fully cooperate with the Grand Jury in the gathering of evidence and I can further assure the Grand Jury that if it takes under advisement an inquiry into the gigantic democratic bloc vote in this county, I will, personally, enter with great zeal into such an investigation on behalf of the Grand Jury."

The statement of July 8, 1960, after the citation for contempt brought against the defendant, stated:

"My defense will be simply that I have spoken the truth. Anyone who will read, point by point, my statements con- [fol. 130] cerning the Judges' charge will find those statements true.

"The Judges were wrong to use 'Negro Bloc voting', the campaign slogan of Talmadge, and similar phrases as language with which to instruct a Grand Jury. When I stated 'It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office' was in contempt of court or was I pointing out the truth?

"When I said 'If anyone in this community be free of racial prejudice, it should be our Judges' was this contempt of Court or was I stating a truth?

"The Judges were morally wrong to suddenly order a Grand Jury to single out the Negro political leaders for indictments under a forgotten law which even judges have violated. When I said 'It further seems that the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters' was this contempt of Court or was I speaking the truth?

"The Judges were professionally wrong in involving the Court in political affairs. I stated that the Judges' charges 'threaten political persecution carried out under the guise of law enforcement' and further that 'this action appears

either as a crude attempt at judicial intimidation of Negro voters and leaders, or, at best, as agitation for a "Negro Vote" issues in local politics.' Can anyone read the Judges' [fol. 131] instructions for indictments under the old "influencing voters' law and honestly say no political persecution is threatened when almost all office holders have violated this law? Can anyone read the long charge reciting political rumors and charges against Negro leaders and voters and honestly say there is no appearance of any attempt at intimidation of Negro voters and leaders? Likewise can anyone deny such a charge and such an investigation in the midst of local political races agitates a 'Negro Vote' issue?

"If the Court will permit I believe that many thousands of witnesses would testify in my behalf that they drew the same conclusions as I from the language used by the Judges in their charge.

"It is just, or even fair play, for the Judges to say they intended no threat, no intimidation, no agitation and therefore it is contempt of court to publicly state honest, sincere conclusions and practical effects caused by the language of the charge.

"Two wrongs do not make a right, and the Judges are wrong to cite me for contempt. I cannot view the Judges' action in any light except to believe I am to be prosecuted for daring to criticise the Judges and for speaking the truth.

"I had hoped that the entire ill-will and race agitation stirred up by the Judges' charge would be permitted to die after a face-saving presentment by the Courts' Grand [fol. 132] Jury. To this end I remained silent despite grossly false and discrediting conclusions presented. Now it appears that the Judges want the satisfaction of find [sic] me in contempt of court, but if they so do, they are in effect saying that the court has done no wrong because the court itself finds it has done no wrong."

The contempt citation, as amended, charged the publication of these three statements of the defendant, each as a separate contempt of the court, and charged that the language used was designed and calculated to be contemptuous

of the court, to ridicule the investigation ordered by the charge, to hamper, hinder, interfere with, and obstruct the said grand jury and the court in the investigation order, and that the news release referred to was issued from the Bibb County sheriff's office located in the Bibb County courthouse, the same building in which the judge charged the grand jury, and that the language imputed lack of judicial integrity to the three judges of the Superior Court of the Macon Judicial Circuit. Count 2 of the citation charged that the letter entitled, "An Open Letter to the Bibb County Grand Jury" was delivered by the defendant to the bailiff of the grand jury at the time the grand jury was investigating the matters set forth in the charge of the court and while the grand jury was actually holding a hearing thereon in the grand jury room of the Bibb County courthouse, and that the defendant instructed the bailiff to deliver the letter to the foreman of the grand jury, which [fol. 133] was done, and that it was at or about the same time he delivered the letter to the grand jury that he released copies to the news media, and that this open letter to the grand jury was designed and calculated to be contemptuous of the court and to ridicule the investigation and to impute lack of judicial integrity to all three judges of the Superior Courts of the Macon Judicial Circuit, and that at the time the letter was issued the grand jury had not completed its investigation into the matters about which it had been instructed by the court. The contempt citation was further amended to add to each count that the respondent was Sheriff of Bibb County, a full-time employee of the county, and as such an officer of the Bibb Superior Court. Count 1 was further amended to charge that at the time the defendant issued his "news release" the grand jury had before it records and documents relating to primaries and elections in which the respondent had taken an active part both as a candidate and as an active supporter of a candidate, and that the grand jury had been charged to investigate said elections, and further that the news release was brought to the attention of the Judges of the Bibb Superior Court and to the members of the grand jury as a result of publication of the statement by

the various news media, and that the statement as so published was actually read by members of the grand jury while they were engaged in the investigation of the matters about which the court had charged them, and that the [fol. 134] issuing, publishing, and causing to be published of the statement by the defendant in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further presented a clear, present, and imminent danger to the proper administration of justice in the Bibb Superior Court. The amendment to count 2 further charged similarly that after the news release was read by the members of the grand jury, while engaged in investigation of the matters that at the time defendant caused to be delivered to the grand jury an "Open Letter to the Bibb County Grand Jury," the grand jury had before it investigation records and documents relating to primaries and elections in which the defendant had participated, and that the jury was then in fact investigating such elections, and that the grand jury had determined to call him as a witness and did so later on. Further amendment to count 2 charged that the publishing and causing to be published of the letter amounted to a course of action designed and calculated to "ridicule, embarrass, tamper, delay, and interfere with and obstruct the grand jury in said investigation ordered by the court, and was further designed and calculated to ridicule the investigation and tamper, hinder, delay and interfere with the court in its instructions to the grand jury," and, further, that the delivery of the letter to the grand jury and the publishing [fol. 135] and causing to be published in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further created a clear, present, and imminent danger to the proper administration of justice in the court; and that the preparing and delivering of the letter to the grand jury was an attempt by the defendant on his part to ridicule the investigation which

was in progress, and did in fact interrupt, delay, and interfere with the business of the grand jury while the grand jury was taking testimony of witnesses regarding the investigation, and that the reading and consideration of the contents of the letter did actually interrupt, delay, and interfere with such investigation, and did thereby create and present a clear, present, and imminent danger to the investigation being conducted by the grand jury. The amendment to count 3 made similar charges concerning the statement made by the defendant on July 8, charging that the issuing, publishing, and causing to be published of the statement presented a clear, present, and imminent danger to the investigation by the grand jury into the matters which the court had instructed it to investigate, and further presented a clear, present, and imminent danger to the proper administration of justice in the court of the handling of the contempt citation against the respondent, which citation was then and there pending in the Bibb [fol. 136] Superior Court, and that the statement was actually read by the members of the grand jury while they were continuing their investigation of the matters about which they had been charged, and was actually read by the judges of the Bibb Superior Court. The amendment to count 3 further charged that this published statement was a course of action by the defendant designed and calculated to hinder, interfere with, and ridicule the grand jury in continuing its investigation of the matters about which the court had charged the jury, and this in and of itself presented and created a clear, present, and imminent danger to the proper investigation and proper conduct of the business of said grand jury. The "Statement" of July 8th was also charged to have been circulated by the defendant to the news media in Macon, which the answer of the defendant impliedly admits.

The defendant filed 19 general or special demurrers to each of the three counts of the contempt citation, and to the citation as finally amended filed six additional demurrers to each count, and renewed the original 19 demurrers to each count, for a total of 75 demurrers. The court overruled both the renewed and additional demurrers.

After a hearing, the defendant was convicted on each count and sentenced to 20 days in jail on each count, to be served concurrently, and to pay a fine of $200 on each count.

The defendant excepted to the overruling of the renewed [fol. 137] and additional demurrers, and further excepted to the order and judgment of the court adjudging him in contempt as being contrary to law and charging that the court should not have found him guilty of contempt of court on the basis of the facts submitted.

At the request of the President of the Macon Circuit Bar Association, the Hon. Charles J. Bloch and the Hon. T. Reese Watkins filed a brief as amici curiae, upon appeal, under Rule 4 of this court.

BELL, Judge. *At the outset may it be explained that the writer prepared and is publishing for the court the opinion and judgment with respect to counts 1 and 3 of the contempt citation. These counts appear here in divisions 1 and 3 respectively. Since the majority of the court en banc agreed with the views expressed by Judge Townsend upon count 2 of the citation, he has prepared the majority view on this count, and his expressions will appear in division 2 of the opinion.*

1. Reduced to its basic elements, the present appeal brings into conflict the constitutional right of freedom of speech, on the one hand, and the right of the courts to carry on their proper functions without any improper interference. Contempt of court has been variously defined: in its broad sense it means disregard for or disobedience of the order or command of the court, but it also includes [fol. 138] interruption of the proceedings by disorderly behavior or insolent language either in its presence or so near thereto as to disturb its proceedings or impair due respect for the authority, justice, or dignity of the court. 12 Am. Jur. 389, Contempt, § 2. Thus, "any conduct that in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of judicial functions" is a contempt. Ex parte Earman, 85 Fla. 297 (95 So. 755, 31 A.L.R. 1226). "A constructive,

indirect, or consequential contempt is one committed outside the presence of the court: it is an act done at a distance, which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice." 17 C. J. S., Contempt, § 4, p. 6. Furthermore, whatever manifestly tends to constitute an interference with the proper exercise of the duties and functions of a grand jury while engaged in the consideration of such matters as may properly come before it constitutes contempt. 17 C.J.S. 45, § 30 c, and cases there cited.

(a) Section 24-105 of our Code provides in fact that the powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of the courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the courts in their official transactions, and the disobedience or resistance by any officer [fol. 139] of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts. This statute was enacted in 1892, apparently pursuant to Article I, Section I, Paragraph XX (6376) of the Constitution of the State of Georgia of 1877, which provided, "The power of the courts to punish for contempt shall be limited by legislative acts." This same provision was written into the Constitution of 1945, and is codified in Code § 2-120. Notwithstanding the wording of Code § 24-105, the Supreme Court has held and reiterated that the constitutional provision does not confer authority upon the legislature to define what are contempts, and to declare that the court shall have jurisdiction over no acts except those specified, because the power to punish contempts is inherent in every court of record. The Supreme Court has held that Code § 24-105, insofar as it seeks to limit the jurisdiction of a constitutional court to punish contempts to certain specified acts, is not binding upon the courts, and they may go beyond the provisions of the statutes in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly

invade them. Bradley v. State, 111 Ga. 168 (1, 2) (36 S. E. 630, 50 L.R.A. 691, 78 Am. St. Rep. 157); and Atlanta Newspapers v. State of Ga., 216 Ga. 393 (1), 402-3 (116 S. E. 2d 580). Part of the briefs of both parties are devoted to the question as to whether the present contempt occurred so [fol. 140] near to the court as to constitute a contemptuous interference with its processes. Under the decisions of the Supreme Court, we do not regard it necessary to determine whether or not the contempts charged fit within the definition of Code § 24-105, because the constitutional courts are not to be limited as to what is a contempt by the acts of the legislature.

(b) It appears clear that whether the contempt be regarded as one of the court or of the grand jury, the result is the same, since if there is a contempt of the grand jury, this is also a contempt of the court, as the grand jury is a constituent part of the court, and anyone whose conduct interferes with or has a tendency to obstruct the grand jury may be found to be in contempt. Commonwealth v. McNary, 246 Mass. 46 (140 N. E. 255; 29 A.L.R. 483); 12 Am. Jur. 403, Contempt, § 21. The grand jury is but an arm of the court. Gates v. State, 73 Ga. App. 824, 826 (38 S.E. 2d 311).

"If there is any one thing in democratic society which must be presumed conclusively, until judicial determination to the contrary by a court of law of impeachment, it is the integrity of the courts. The structure of our government demands that freedom of speech be subordinated to the welfare of society in the respect for the integrity and sanctity of our courts. A judgeship is an institution and an ideal, and when a judge is accused of wrongdoing it is more than an attack upon an individual. It is an attack [fol. 141] and an undermining of one of the most important supports of the government. If a judge is corrupt or incompetent, there may be a remedy by suit, prosecution, impeachment, or at the polls. The public policy of democracy is that the judiciary shall not be dragged in the mire because of a real or a supposed wrong. If such could be done, and results confined to punishing the judge, the rule

might be different, but when it causes disrespect for the high office which the judge seeks to personify, and subjects it to ridicule and contempt, the tendency is for men to turn their backs on the institution created for the safety and well being of mankind and take the law into their own hands. The constitution does not guarantee freedom to 'say what we please' about a judge or a court. Contempt of court is an abuse of such a privilege. In re Fite [11 Ga. App. 665] supra. The right to define and punish for contempt is inherent in constitutional courts, so the definition of contempt in this case, involving the superior court, is not confined to the Code definition by which courts which are not constitutional are governed; and the question whether the conduct complained of interfered with the administration of justice in a pending case is not involved. In re Fite, supra; Bradley v. State, 111 Ga. 168 (36 S. E. 630, 50 L.R.A. 691, 78 Am. St. R. 157); Cobb v. State, 187 Ga. 448 (200 S. E. 796). In view of the radical language complained of in this case, imputing lack of virtue and [fol. 142] integrity to the judge of the court for an act done in his official capacity, and in view of the law as laid down by the decisions cited, we hold that there was no error in overruling the pleas to the jurisdiction and in bar, and in adjudging the respondent in contempt." Cobb v. State, 59 Ga. App. 695, 701 (2 S. E. 2d 116). In the Cobb case there was considerable intemperate language used by the defendant in a book published by him which was circulated in the counties comprising the Ogeechee judicial circuit, in which, inter alia, the defendant had written that the trial judge was "as much a judicial prostitute as is any loose wretch who walks the streets a moral prostitute."

"The constitutional right of freedom of speech or of the press was not intended as a refuge for the contemner or slanderer or libeler. Contempt of the court, slander, and libel constitute *abuses* of the privilege, for the commission of which the offenders are justly and lawfully punishable." In re Fite, 11 Ga. App. 665(6) (76 S. E. 397).

"The power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone and

respect for the law is destroyed. Other departments of the government may outlive unjust criticism, and may still render service to the people, even when unfairly assailed, but when confidence in the courts is gone, respect for the law itself will speedily disappear, and society will become [fol. 143] the prey of fraud, violence, and crime. This one element in government and society which the people desire above all things else to keep from the taint of suspicion is the administration of justice in the courts." Ibid., p. 680.

The court below has adjudged the defendant in contempt upon all three counts. In view of the language used and the dissemination of it by the defendant through the public news media, we cannot say that the conviction was in error upon counts 1 and 3. The language of the news release, the basis of count 1 of the citation for contempt, charged the judges of the superior court with threatening political persecution under the guise of law enforcement, and further charged them with bias against a minority group, and compared the effect of the instructions to the grand jury with the attempted intimidation as used by the Ku Klux Klan against this group. It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge.

2. However, as applied to count 2, it is very clear from an examination of Townsend v. State of Ga., 54 Ga. App. 627 (188 S. E. 560); Atlanta Newspapers, Inc. v. State [fol. 144] of Ga., 216 Ga. 399, supra; McGill v. State of Ga., 209 Ga. 500 (1) (74 S. E. 2d 78); Adams v. State of Ga., 89 Ga. App. 882 (81 S. E. 2d 507); Clark v. State of Ga., 90 Ga. App. 330 (83 S. E. 2d 45); Vines v. State of Ga., 69 Ga. App. 175 (24 S. E. 2d 864); and Bridges v. California, 314 U. S. 252 (62 S. Ct. 190, 86 L. Ed. 192), that the necessary attribute of tendency to obstruct the administration of justice has not been met. In the "Open Letter to the Grand Jury" the defendant in no wise suggested that the

instructions of the court in regard to bloc voting were wrong or done with improper motive; he did not dwell on this subject at all. He did urge an investigation of the influence of the Democratic Executive Committee and suggest that bribes were exchanged for nominations by this group. He accused committee members of violations of law. He urged investigation of certain alleged practices in the same general language the court had used in dealing with the Negro bloc vote. This letter might have been considered by the court along with the press release as showing that the motives of the defendant were to impugn the court's integrity, and as an additional reason for holding him in contempt on count 1, but count 2 alone contains no matter at all which would tend to obstruct the investigation by the grand jury of the matters set out in count 1. It deals with irrelevant material. Perhaps it was written [fol. 145] in a satiric manner, and was intended to imply that the court was misdirecting the course of the grand jury's inquiry, but this does not appear from an examination of the letter, and there is nothing in the letter which would in any way impede the investigation as related to Negro bloc voting. Count 2 must stand alone to meet the test of whether it constitutes a "clear and present danger to the administration of justice" (McGill v. State of Ga., 209 Ga. 500, supra), and it fails to meet this test. The court erred in holding the defendant in contempt as to count 2.

3. (a) The third count of the citation for contempt arose out of the statement of July 8 which reiterated in large part the statements made in the original news release which was the basis of the first count, and charges the judges with being morally and professionally wrong, and again reiterates charges of judicial intimidation and political persecution. Although the defendant labeled the statement of July 8 as his "defense", the extensive reiteration of his previous assault upon the court served to compound his contumacious conduct. When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the

court, this conduct could properly be found by the court below to constitute a contempt.

The first two demurrers of the defendant to counts 1 [fol. 146] and 3 of the citation for contempt charging that they set forth no grounds for holding him in contempt nor show any acts for which he should be convicted were properly overruled.

(b) Demurrers 3, 4, 5, and 6 to counts 1 and 3 charge that the citations in effect fail to allege any acts of the defendant which actually amounted to or accomplished an obstruction of the administration of justice, or that the act or acts formed a clear and present danger of obstructing the administration of justice. The trial court properly overruled these demurrers, for the success or failure of the attempt to interfere is not the test. That the attempt is not successful is no defense, since it cannot be known what, if any, effect it had. People v. Doss, 382 Ill. 307 (46 N. E. 2d 984). See also, 12 Am. Jur. 417, Contempt, § 37, and cases there cited. With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding.

(c) Demurrer 7 to counts 1 and 3 charges that there is no allegation that the statements were false or untrue, and that lacking such allegation the citations are fatally defective. This demurrer confuses the law of defamation [fol. 147] with that relating to contempt of court. It is possible that a statement or act might be true but have no relevance to the proceeding and tend to obstruct or impair the administration of justice in a particular case. Furthermore, many of the statements made by the defendant as charged in these counts are matters only of opinion as to which obviously there can be no absolute test or proof of truth or falsity. The trial court properly overruled demurrer number 7 to counts 1 and 3.

(d) Demurrer number 8 to counts 1 and 3 raises the question of freedom of speech guaranteed by the Consti-

tution of the State of Georgia, codified in Code § 2-115, which provides, "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty." One who is guilty of contempt of court cannot claim the protection of this section. In re Fite, 11 Ga. App. 665 (6), supra. Furthermore, the abuse of liberty of speech and freedom of the press are not guaranteed by this section. McGill v. State of Ga., 209 Ga. 500 (supra). See also the discussion in division 1 of this opinion.

(e) Demurrers numbered 9 and 10 to counts 1 and 3 in effect raise similar issues citing the United States Constitution. We hold that a punishment for contempt does not violate the due process, freedom of speech, or the equal protection clauses of the United States Constitution.

[fol. 148] (f) The 11th demurrer to counts 1 and 3 contends that the act of the judge in charging the grand jury was a nonjudicial act as distinguished from a judicial act, and that the criticism by the respondent with respect thereto was, therefore, not such an act as could constitute a contempt of court. There is no merit to this demurrer, for the act of the judge in charging the grand jury is a judicial act. Demurrer number 11 was properly overruled.

(g) Demurrer number 12 to counts 1 and 3 contends that the citations set forth no ground for holding the defendant in contempt, for the reason that as sheriff he has both the right and the duty in the exercise of his executive functions to determine what the public safety and tranquillity demand, and that the citation is void because it fails to negative in any way that he was performing such function.

While a sheriff may have a right and a duty in the exercise of his functions to determine what the public safety and tranquillity demand, this right is not vested exclusively in the sheriff, nor is it absolute, and where, as here, what he did is held to be a contempt of court, the vesture of his office will not shield him nor does it bestow license upon him. No criminal intent is necessary for there to be a

contempt of court, although the denial of contumacious intent, though not ordinarily a defense, may be considered in mitigation of punishment. 17 C.J. S. 54, Contempt, [fol. 149] § 42. If the rule were otherwise, one in contempt might always purge himself by an assertion of good intention. State v. District Court of Seventh Judicial District, 76 Mont. 222 (246 P. 250) See also, 12 Am. Jur. 439, Contempt, § 73.

(h) Demurrer number 13 to counts 1 and 3 raises again the question of denial of due process, contending that the citations deprive him of due process of law, in that the court is proceeding to prosecute a matter concerning which it has no jurisdiction, since the acts occurred outside the court room and in the exercise of freedom of speech. This demurrer was properly overruled.

(i) Demurrer number 14 moves to strike the allegation in counts 1 and 3 to the effect that he was at all times during the contemptuous acts cited as sheriff of Bibb County. The fact that the defendant was in fact the sheriff of Bibb County at the time, and as such an officer and an arm of the court, was relevant to the inquiry, properly considerable by the court, and this demurrer was properly overruled.

(j) Demurrer number 15 contends as to count 1 that the part of the citation to the effect that the statement made by the respondent was disseminated to the general public should be stricken, on the ground that it is entirely irrelevant and immaterial. But the release to the public of the contemptuous matter presented to the grand jury was relevant and material, and demurrer 15 to the first count [fol. 150] was properly overruled.

(k) Demurrer number 15 to count 3 attacks the allegation again as to the location of the sheriff's office and charges that the allegation that the respondent appeared is too vague and indefinite to show where he appeared from or to whom he appeared. Reading this paragraph 3 of count 3 as a whole, we feel it is sufficiently definite. The other contentions were properly overruled. Special demurrers 16, 17, 18, and 19 to counts 1 and 3 are all without merit, and were properly overruled by the trial court.

(1) We now come to the six additional demurrers to counts 1 and 3 of the citation for contempt. The additional demurrers 1 and 2 are merely repetitious as to effect of others previously considered, and are without merit. Demurrer number 3 to the amended citation charges that the allegation that he is on the Bibb County payroll is irrelevant. This demurrer has no merit, and neither does the objection to the allegation that the defendant is an officer of Bibb Superior Court on the ground that it is a conclusion of the pleader. Demurrers 4, 5, and 6 to the citation as amended merely reiterate the attacks which we have previously passed upon, and were properly overruled. For the reasons indicated in this opinion, the exception to the judgment of conviction on counts 1 and 3 was also properly overruled.

We do not intend by this decision to hold that the opin- [fol. 151] ions, the judgments, the proceedings of the courts, or the judges themselves, are under any and all circumstances exempt from objection or remonstrative criticism. But where, as here, the three judges involved acted jointly, and in their place proceeded within the ideals and the letter of the law, and where, as here, there were vitriolic attacks upon the motives, judgment, and biases of these judges, and all this carried on by the sheriff, an officer of the law and of the court, at times during which the grand jury properly had before it for consideration the charge of the court, we can only conclude that the sheriff's intemperate actions constituted contempt and the convictions on counts 1 and 3 were proper.

The judgment is affirmed as to the conviction on counts 1 and 3 of the citations for contempt, but reversed as to the conviction upon count 2.

In division 1 of this opinion, Felton, C. J., Carlisle, Nichols, Frankum, and Jordan, JJ., concur, and Townsend, P. J., concurs specially.

As to division 2, prepared and delivered by Judge Townsend, Felton, C. J., Carlisle, Nichols, and Jordan, JJ., concur. Bell and Frankum, JJ., dissent.

In division 3, Carlisle, Nichols, Frankum, and Jordan, JJ., concur. Felton, C. J., and Townsend, P. J., dissent.

[fol. 152] Townsend, Presiding Judge. (Specially concurring as to count 1.) 1. First, it should be stated that I concur in the judgment of conviction of the defendant as to count 1, on the ground that the contents of the newspaper article was both contumacious and sufficient to amount to an obstruction of the administration of justice. It must appear from the record to be both of these things. Clark v. State of Ga., 90 Ga. App. 330 (2) (83 S. E. 2d 45). It was definitely contumacious in that it accused the judges of "threatening political persecution under the guise of law enforcement", of "a crude attempt at judicial intimidation"; of "manipulating the law in a manner to persecute the few, as "shocking . . . the height of hypocrisy", and so forth. This was sufficient to amount to an obstruction of the administration of justice. The court's charge instructed the grand jury to inquire into certain rumored infractions of criminal law by means of traffic in, and the purchase and sale of bloc votes between some candidates for office and some Negro leaders in elections where it did not appear that any issue was involved such that their self-interest would be a factor in their decision. The grand jury was in session and presumably investigating or about to investigate the matter at the time the article was published. The grand jury is an arm of the superior court and [fol. 153] the law and a part of the machinery of government. Gates v. State, 73 Ga. App. 824 (38 S. E. 2d 311); Cook v. Sikes, 210 Ga. 722 (82 S. E. 2d 641). In Atlanta Newspapers v. State of Ga., 216 Ga. 399 (116 S. E. 2d 580) the court, after quoting from McGill v. State of Ga., 209 Ga. 500 (1) (74 S. E. 2d 78), to the effect that an abuse of the right to freedom of speech which results in obstructing the administration of justice will subject the abuser to punishment for contempt of court, held that the newspaper article in question there was not an abuse for the reason that at the time when it was published there was no reasonable duty on the newspaper to anticipate that the article in question would come to the attention of the jurors or otherwise interfere with the trial of the case.

There must always be a balance between the right of freedom of speech and the right to unimpeded justice. To paraphrase the Apostle, there is a time to speak and a time to keep silent. The time to speak, even to accuse the judge of hypocrisy and moral laxness, justly or unjustly, could well exist, say, during a political campaign when a candidate for office is arguing against the re-election of that judge. It could exist at other times, when no election is imminent, but under the general right of a citizen of the State to criticise his elected officials. When it cannot exist is when the words are directed toward the impeding [fol. 154] of a judicial proceeding presently in progress. It is implicit in the decision in the Atlanta Newspapers case, supra, that the very same article, published at a time and in a place where it would tend to influence the jury, would constitute a contempt. I agree that count 1 relating to a newspaper article written by the sheriff, a man associated in the minds of many lay people with the pronouncement as well as the enforcement of the law, accusing the judge of instructing the grand jury to ferret out certain crimes relating to possible bribery, not in accordance with his duty to so instruct the jury, but as a cover for personal reasons aimed at stirring up race prejudice, is a contempt of the court and the grand jury, necessarily calculated to impede the administration of justice, and should be punished as such.

"Judges are not exempt from public criticism of their official acts or conduct. It is only when such criticism obstructs the administration of justice that they constitute contempt of court." Townsend v. State of Ga., 54 Ga. App. 627, 637 (188 S. E. 560).

2. (Dissenting as to count 3). In count 3 of the rule for contempt the court found that the defendant committed an additional contempt when he issued a news release after the citation for contempt had been served on him, in which he stated publicly his defense against the attachment for contempt, contending that he spoke no more than [fol. 155] the truth and that he had a right to speak the truth. The defense necessarily dealt with the charge, and

throughout its body reiterated most of what the defendant had previously stated. It begins: "My defense will be simply that I have spoken the truth", which indicates that the contents of the contempt citation, including the prior statements made by the defendant, had already been made public. We have held in this opinion that, as to a contempt, truth is not necessarily a good defense, but this fact did not deprive the defendant of relying upon it and urging it before the court. Whether or not he later interposed the same defense that he announced he would urge, he had a right to urge it before the court, and it certainly amounted to no obstruction of justice for him to state outside of the court that he intended to do so.

This statement contains no new defamatory or obstructive material, and it is but a repetition of the original statements on which the contempt charge was made and an analysis of them in line with the proposed defense to be urged. Whether it amounted to a republication within the rule relating to slander and libel is completely irrelevant, and in my opinion the court in holding that this is an additional contempt is departing from the "clear and present danger" rule recognized by our courts and by the majority opinion. It was the court itself which, and we [fol. 156] hold correctly, gave the statement status as a case in court when he cited the defendant, and there is and can be no rule of law which prevents a defendant in a judicial proceeding from making public his defense, whether in or out of court, on the ground that the publication of such defense is obstructive to the administration of justice. It is obvious that the defendant could file this same defense in answer to the citation and that the newspapers could publish it; therefore the defendant could relay its contents directly to the newspapers for the purpose of publication. In my opinion the court erred in holding the defendant in contempt under count 3. All citizens against whom charges of any nature are brought must be accorded the right to defend, and any intimidation tending to restrict such right is a step toward totalitarianism.

Felton, C.J., joins in this dissent.

Bell, Judge, dissenting as to division 2 of the opinion. For the reasons indicated in divisions 1 and 3 of this opinion, I feel the conviction upon count 2 should also be affirmed. In my opinion the "Open Letter to the Grand Jury," which formed the basis of count 2 of the citation for contempt was properly found by the court below to interfere with or obstruct the grand jury in its delibera- [fol. 157] tions. The sum total of this letter reveals an attempt to divert the grand jury from consideration of the charges given to it by the judge and an attempt to aim the attention of the jury at alleged violations of law by the Bibb County Democratic Executive Committee and away from the matters which the judge had charged the grand jury to investigate. In this respect it is certainly the proper function of the judge to charge the grand jury, and not the prerogative of the sheriff either to charge the jury or to interfere with the judge's charge to it.

Judge Frankum agrees with these views and has directed that he be recorded as concurring with this dissent to division 2 of the opinion.

[fol. 158]

In the Court of Appeals of the State of Georgia

J. I. Wood,

v.

State of Georgia.

Judgment—February 23, 1961

This case came before this court upon a writ of error from the Superior court of Bibb county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed as to Counts 1 and 3 of the citation for contempt and reversed as to Count 2. Carlisle, Nichols and Jordan, JJ., concur. Townsend, P.J., concurs

specially to Division 1 of the opinion. Bell and Frankum, JJ., dissent to Division 2 of the opinion. Felton, C.J., and Townsend, P.J., dissent to Division 3 of the opinion.

[fol. 174]

IN COURT OF APPEALS OF THE STATE OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—March 10, 1961

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Felton, C.J., dissents.

[fol. 178]

IN THE SUPREME COURT OF GEORGIA

JAMES I. WOOD,

v.

THE STATE OF GEORGIA.

ORDER DENYING APPLICATION FOR CERTIORARI—May 22, 1961

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur.

[fol. 179] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 180]

IN THE SUPREME COURT OF GEORGIA

MOTION OF JAMES I. WOOD, APPLICANT FOR CERTIORARI FOR A RECONSIDERATION OF HIS APPLICATION FOR WRIT OF CERTIORARI IN THE ABOVE STATED CASE—Filed May 30, 1961

Comes now James I. Wood and files this his motion for reconsideration of his application for certiorari in the above-stated case, and for grounds thereof says:

(A) In denying the application for certiorari the Supreme Court has overlooked the provisions of the Constitution of the United States of America and the decisions of the Supreme Court of the United States which are controlling and which require a different result, and which warrant and require the granting of certiorari by this court.

(B) Applican. respectfully shows that it is proper and necessary for this Court to grant certiorari for the following reasons:

1.

The Supreme Court of the United States has ruled that the Fifth Amendment to the Constitution of the United States, protecting freedom of speech, together with the Fourteenth Amendment to the Constitution of the United States, protecting citizens from state action, prohibit the summary punishment of a citizen of the United States through a contempt of court action for the exercise of such citizen's freedom of speech in publishing statements which create no clear and present danger to the administration of justice.

[fol. 181] *Bridges* v. *California*, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192.

Pennekamp v. *Florida*, 328 U.S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295.

Craig v. *Harney*, 331 U.S. 367, 67 S. Ct. 1249, 91 L. Ed. 546.

2.

The decision of the Court of Appeals of Georgia in this case holds that "punishment for contempt of court is not prevented by the constitutional guaranty of freedom of speech" and cites with approval the case of Bradley v. State, 111 Ga. 168, which case holds that the superior courts of Georgia have "all the rights and powers possessed by all courts of record prior to that time" (referring to the Georgia State Constitution of 1777). The Supreme Court of the United States has expressly

ruled that the doctrine of scandalizing the court is not the law of the land in this country and that no state court can lay claim to such power, if ever it did exist.

Bridges v. *California* Supra.

3.

The applicant for certiorari has been denied basic and fundamental constitutional rights guaranteed to him by the Constitution of the United States in that:

(1) Applicant has been denied the right to present any defense to the action brought against him. The trial court ruled that published statements of the defendant were contempt of court "in and of itself" and prevented the applicant from proving that such statement in no way obstructed justice or created a danger to the court. The Court of Appeals of Georgia has [fol. 182] affirmed the trial judge's ruling and the Supreme Court of Georgia by refusing to review the case leaves the applicant deprived of his basic constitutional rights.

(2) The applicant has been denied the right to require the State plead and prove a case against him. The trial judge found the defendant to be in contempt of court on the basis that statements of the applicant, made outside the presence of the court and published in news media, "in and of itself" constituted contempt of court, and the state was not required to plead or prove that such statements presented a clear and present danger to the administration of justice.

4.

There is one fact in the record which we believe the Court of Appeals overlooked and the Supreme Court has now overlooked, and which would necessitate a holding that the conviction in this case was repugnant to the equal protection clause of the Constitution of the United States. The fact is that it was the Judges, themselves, who first resorted to the press in this case. We submit that the Sheriff had the same right to do

this as the Judges, and to permit one official to take such action without permitting another to do so does, in fact, amount to a denial of equal protection of the laws. We submit that, if the Court of Appeals had considered this fact, a different ruling would have resulted with reference to a denial of equal protection of the laws.

We most respectfully pray that this Honorable Court look carefully into the record in the light of the arguments and points herein raised and that they reconsider and grant the application for certiorari and consider and correct the [fol. 183] errors in the decision of the Court of Appeals of Georgia.

Respectfully submitted,

Edward F. Taylor, 321 Cotton Ave., Macon, Georgia; Charles F. Adams, 165 First Street Building, Macon, Georgia; H. T. O'Neal, Jr., 165 First Street Building, Macon, Georgia.

[fol. 184] [File endorsement omitted]

[fol. 185]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR RECONSIDERATION—June 8, 1961

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

[fol. 186] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 187]

SUPREME COURT OF THE UNITED STATES

No. 369, October Term, 1961

JAMES L. WOOD, Petitioner,

vs.

GEORGIA.

ORDER ALLOWING CERTIORARI—November 6, 1961

The petition herein for a writ of certiorari to the Court of Appeals of the State of Georgia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

JAMES I. WOOD,
Petitioner,

vs.

STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals of Georgia.

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No. .....

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

JAMES I. WOOD,
Petitioner,

vs.

STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals of Georgia.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, James I. Wood, respectfully shows,

I. OPINION BELOW.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Georgia entered in the case of **James I. Wood v. State of Georgia**, 103 Ga. App. 305, 119 S. E. 2nd 261 (1961), same being case number 38574 in the Court of Appeals of Georgia.

II. JURISDICTION.

This judgment of the Court of Appeals of Georgia was dated and entered on February 23, 1961.

A rehearing in said judgment was denied by the Court of Appeals of Georgia on March 10, 1961.

A petition to the Supreme Court of Georgia for writ of certiorari to review the judgment of the Court of Appeals of Georgia was denied on May 22, 1961. A motion for reconsideration of the petition for certiorari was denied by the Supreme Court of Georgia on June 8, 1961. Within 90 days thereafter, this petition is filed.

The jurisdiction of the Supreme Court of the United States to review this case on petition for certiorari rests upon 28 U. S. C. 1257 (3), because in this case petitioner specially set up and claimed rights, privileges, and immunities under the Constitution of the United States.

III. QUESTIONS FOR REVIEW.

In view of the freedom of speech and press granted citizens of this country under the First and Fourteenth Amendments to the Constitution of the United States:

1. If a county judge uses the form of a special charge to a grand jury to make an inflammatory, prejudicial, and derogatory attack on Negro voters in all news media, may a county sheriff be imprisoned for contempt because of his public criticism of the judge's act?

2. May state courts apply the doctrine of "scandalizing the court" to hold in contempt one who publishes criticism of a state court's act?

IV. CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the Constitution of the United States provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V. STATEMENT OF CASE.

In the midst of a local political campaign, on June 6, 1960, a state court judge made a "special charge" to a county grand jury. This "charge" was delivered before reporters for all local news media and all news media had been notified to have reporters present in the court room at that time. The judge stated that 80 to 85% of Negroes were "bloc voting", that colored voters did not do their own "thinking and evaluating", that money spent for newspaper advertisements, radio announcements, etc., in solicitation of "the Negro vote" actually amounted to a purchase of such votes, and that the election laws of the State were being violated. The "charge" as a whole clearly implied that any public official who received "a Negro Bloc vote" did so through "unfair, corrupt or unlawful practices" (R. 12-21).

The next day the Sheriff of the County, petitioner herein, gave to local news media a news release which severely criticized the judge's action and warned that such action threatened political intimidation and persecution of Negro voters in the county under the guise of law enforcement (R. 22, 23, 24).

One month later petitioner was cited for contempt of court because he had issued the news release (R. 10-26).

The following day, July 7, 1960, petitioner released a public statement saying that his defense would be that he had spoken the truth, that he had a right to speak the truth, and reiterated the truth of what he had previously stated (R. 38, 39, 40).

The citation for contempt was amended to charge that this last public statement of the petitioner was an additional count of contempt of court (R. 27-41).

On hearing before the trial judge who issued the contempt citation, no evidence whatsoever was introduced to show that the publications of petitioner resulted in any actual interference or obstruction of the court or grand jury. A short statement of a few circumstances existing at the time the statements were published is contained in a stipulation of facts entered in the case (R. 112).

The gravamen of the contempt citation as twice amended, and the gravamen of the state's case against petitioner, was that the simple publishing of petitioner's news release and defense statement, **in and of itself** was a contempt of court and **in and of itself** was clear and present danger to the administration of justice (R. 92, 96).

In the court of first instance, petitioner, by general demurrers to the contempt citation, did specially set up and claimed his rights, privileges, and immunities under the Constitution of the United States and set forth verbatim the provisions of the First Amendment thereof guaranteeing his freedom of speech and the provisions of the Fourteenth Amendment thereof guaranteeing his constitutional rights against state action (R. 45-50, 68-73). Also in the written response of petitioner to citation, petitioner again plead and specially set up and claimed "the liberty of speech guaranteed to him by the Fourteenth Amendment . . . and as provided in the First Amendment to the Constitution of the United States . . ." (R. 80, 81, 82).

The trial judge overruled all of petitioner's demurrers (R. 110) and on the facts and pleadings adjudicated that petitioner was in contempt of court on each of the counts of the citation as amended, and ordered petitioner to prison.

The case went to the Court of Appeals of Georgia on writ of error, in which appellate court petitioner by Bill

of Exceptions assigned error on the judgment overruling his demurrers and on the judgment adjudicating him in contempt of court (R. 2, 3).

The Court of Appeals of Georgia affirmed the judgment of the lower court as to Count 1 (petitioner's news release) and as to Count 3 (petitioner's defense statement), but reversed the judgment of the lower court as to Count 2 of the contempt citation (involving an "open letter" published by petitioner). Petitioner does not herein seek review of the judgment of the Court of Appeals as to Count 2.

The Supreme Court of Georgia denied certiorari in the case, thus making the Court of Appeals of Georgia the highest state court in which a judgment could be had in petitioner's case.

VI. REASONS FOR GRANTING WRIT OF CERTIORARI.

(1) The decision in this case is contrary to the settled prior decisions of the Supreme Court of the United States in the cases of **Bridges v. California,** 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941); **Pennekamp v. Florida,** 328 U. S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946); **Craig v. Harney,** 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947); and **Cammer v. United States,** 350 U. S. 399, 100 L. Ed. 474, 76 S. Ct. 456 (1956).

(2) The decision in this case holds that state courts which are created by state constitutions are not limited, in their power to define contempt, by the provisions of the Constitution of the United States; however, such state action is contrary to the principles of law contained in **Schneider v. State,** 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939); **Kingsley International Pictures Corp v. Re-**

gents of University of N. Y., 360 U. S. 684, 79 S. Ct. 1362, 3 L. Ed. 2nd 1512 (1959); **Hague v. C. I. O.**, 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1432 (1939); **Gosjean v. American Press Co.**, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

(3) The objective test of "clear and present danger" established by this court in **Bridges v. California**, 314 U. S. 252, is perverted to a subjective test of "tendency" by the decision of the Court of Appeals of Georgia in this case, [Headnote 1 (b)]. This decision produces a lack of uniformity in the application of the Constitution of the United States among the several states and the citizens thereof, and denies to a citizen of the United States who is a citizen of the State of Georgia the rights guaranteed to all citizens under the First and Fourteenth Amendments to the Constitution of the United States.

VII. **ARGUMENT**.

The final decision in this case will determine whether or not state courts and grand juries may be used to intimidate Negro voters of the southern states on the basis that "bloc voting" is illegal and corrupt. If such state court action is immune from public criticism through use of the contempt power to imprison, then the freedom of speech and press provisions of the federal Constitution provide no protection to one who would publicly disagree.

A state judge has no right to deliver an inflammatory and prejudical charge to a grand jury, **Clair v. Nebraska**, 40 Neb. 534, 59 N. W. 118, 28 L. R. A. 367 (1894), and certainly publicity of such a charge in all news media is not a judicial act, but does make the effect of such a charge community wide.

Where a community is inflamed by racial rumors and accusations, the twin hounds of prejudice and passion are loosened, and constitutional guarantees of free election and free speech are often brushed aside and denied.

In this case there is no proof of resulting danger to the community, the grand jury or to the court by reason of petitioner's statements. No such danger was plead or proved because the citation for contempt alleged that such statements were each "in and of itself" a contempt of court and the trial judge so determined, and ruled that the truth of such statements were no defense, by overruling petitioner's demurrers.

Georgia courts, created by the state constitution, have long claimed all the power to define contempt possessed by all courts of record prior to the adoption of the State Constitution in 1777. **Bradley v. State**, 111 Georgia 168,

36 S. E. 630 (1900); **Atlanta Newspapers, Inc., v. State,** 216 Ga. 399, 116 S. E. 2nd 580 (1960).

The case of **In re Fite,** 11 Ga. App. 665, 76 S. E. 397 (1912), which is quoted at great length in the opinion now before this court for review, contains the most detailed reasoning of the doctrine of "scandalizing the court" to be found in American jurisprudence.

The decision in petitioner's case should be reviewed by this Court because the freedom of speech and press provisions of the First Amendment to the Constitution of the United States prohibits to courts of this country the power of King's courts to lay by the heels one who scandalizes the court in publications outside the presence of the court. **Bridges v. California,** 314 U. S. 252 (1941); **Pennekamp v. Florida,** 328 U. S. 331 (1946); **Craig v. Harney,** 331 U. S. 367 (1947).

Likewise, the Fourteenth Amendment to the Constitution of the United States prohibits state action which denies constitutional rights of citizens of the United States. **Kingsley International Pictures Corp. v. Regents of University of N. Y.,** 360 U. S. 684 (1959).

The decisions of this court would indicate that a citizen of the United States does not lose his constitutional rights of freedom of speech and press simply because at some times and for some purposes he serves as an officer of a court, particularly where the statements made were not a part of any transaction or service as a court officer. **Cramer v. United States,** 350 U. S. 399, 76 S. Ct. 456, 100 L. Ed. 474 (1956); **In re Harriett Sawyer,** 360 U. S. 622, 79 S. Ct. 1376, 3 L. Ed. 2nd 1473 (1959).

In conclusion, the following words of George Washington seem most appropriate:

"If men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and, dumb and silent, we may be led away like sheep to the slaughter."

Address to Officers of the Army (March 15, 1783.)

VIII. **CONCLUSION.**

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A.

(Judgment in Question.)

Court of Appeals,
Of the State of Georgia.

Atlanta, February 23, 1961.

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

J. I. Wood v. State of Georgia

This case came before this court upon a writ of error from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed as to Counts 1 and 3 of the citation for contempt and reversed as to Count 2. Carlisle, Nichols and Jordan, JJ., concur. Townsend, P. J., concurs specially to Division 1 of the opinion. Bell and Frankum, JJ., dissent to Division 2 of the opinion. Felton, C. J., and Townsend, P. J., dissent to Division 3 of the opinion.

APPENDIX B.

(Text of Opinion Below.)

38574. J. I. Wood v. State of Georgia B-80

1. The trial court did not err in finding the defendant in contempt under count 1 of the indictment.

(a) The constitutional courts of this state are not limited by the definition of contempts in Code, § 24-105, and may go beyond the provisions of the statute in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly invade them.

(b) The grand jury is a constituent part of the court, and anyone whose conduct interferes with, or has a tendency to obstruct the grand jury, or endeavors to interfere with the performance of its duties may be found in contempt.

(c) The principles stated in headnote 3 also are appropriate to division 1 of the opinion.

2. The trial court erred in convicting the defendant on count 2 of the indictment for contempt.

3. (a) The trial court did not err in its conviction of the defendant on the third count of the citation for contempt.

(b) The success or failure of an attempt to interfere with the administration of justice is not a test of whether or not there is a contempt, since it can not be known what effect, if any, the attempt may have had.

(c) The truth or falsity of statements made in an attempt to obstruct or impair the administration of justice is irrelevant and, if contemptuous, such statements may be punished as a contempt.

(d) Punishment for contempt of court is not prevented by the constitutional guaranty of freedom of speech, Code, § 2-115, since contempt of court is an abuse of the liberty of speech.

(e) The due process, freedom of speech, and equal protection clauses of the Constitution of the United States do not bar punishment for contempt of court.

(f) The act of the judge in charging the grand jury with its duties is a judicial act, and an improper interference therewith may be found to be contempt of court.

(g) The lack of criminal intent or the presence of good faith will not bar a conviction for contempt of court.

(h) Punishment for contempt of court is not a denial of due process of law.

(i)-(k) The remaining of seventy-five demurrers are considered and disposed of in the opinion.

(l) Intemperate and repeated attacks upon the motives, judgment, and alleged biases of the judge which allegedly led him to charge the grand jury to make certain investigations, and which attacks could have had the effect of interfering with, or diverting the attention of the grand jury from its assigned duties, may properly be found to be contempt of court.

(m) The principles stated in headnote 1 also are appropriate to division 3 of the opinion.

The defendant, at the time sheriff of Bibb County, Georgia, was cited for and convicted of contempt of court by the Superior Court of Bibb County, Georgia. The facts out of which the contempt citation arose were as follows: On June 6, 1960, the opening day of the June Term, 1960, of the Bibb Superior Court, Judge Long charged the grand jury, which had been regularly impanelled and sworn for the term of court, giving them special instruc-

tions which were joined in by the other two judges of that court, advising the grand jury that a situation had arisen in the county which the court felt should be thoroughly and completely investigated by the grand jury. In this charge the jury was advised that there appeared to be an inane and inexplicable pattern of Negro bloc voting. The charge went on to point out that accusations had been made that candidates for public office had paid large sums of money to certain leaders in an effort to gain their favor and to obtain the Negro vote, and that there were also accusations that certain Negro leaders, after having met with a candidate and endorsed his candidacy, have changed and supported an opposing candidate who put up a large sum of money, and that this creates an unhealthy, dangerous, and unlawful situation which tends to corrupt public office holders and some candidates for public office. The charge went on to point out the violations of law which would be involved should the grand jury find these charges to be founded in truth. The charge cited Code § 34-9907, which provides, in part, that if any person shall buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof such person shall be guilty of a misdemeanor. Code § 34-1907.1 also was cited. This section reads, "No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting." The charge went on to instruct the jury that if money is furnished to any person or group of persons for the purpose of hiring people qualified to vote to canvass other voters in an effort to influence their votes in behalf of any candidate that this would be a violation of law and against the public policy of the State. Certain

questions were posed to the jury which it was to investigate in inquiring into these charges of violations of election laws.

The next day, while the grand jury was in session and actually engaged in investigating the matters set forth in the charge by the court, the defendant prepared and issued a written statement which was by him and under his direction on that day released to local news media, causing the contents of this statement to be published and disseminated to the general public. At the time this "news release" was made, the grand jury had before them voting tabulations and other documents, including endorsements by certain political groups, relating to primaries and elections in which the defendant actively participated as a candidate for public office and as an active supporter of a candidate. It was stipulated between the solicitor general and the defendant that the judges of the Superior Court read the statement, and also that members of the Bibb County grand jury, during the course of its investigation about the matters they were charged to investigate, read the news release of the defendant, his "An Open Letter to the Bibb County Grand Jury," and a further statement which the defendant made on July 8th after he was cited for contempt of court. The "Open Letter to the Bibb County Grand Jury" was signed by the defendant with the title, "Sheriff of Bibb County." The news release of June 7th and the statement of July 8th were signed by him without the addition of the caption, "Sheriff of Bibb County."

The news release of June 7th stated:

"The people of Bibb County should take notice when their highest judicial officers threaten political persecution carried out under the guise of law enforcement.

"Whatever the Judges' intention, the action of the Superior Court Judges ordering a Bibb County Grand Jury

to investigate 'Negro block voting' will be considered one of the most deplorable examples of race agitation to come out of Middle Georgia in recent years.

"At a time when all thinking people want to preserve the good will and cooperation between the races in Bibb County, this action appears either as a crude attempt at judicial intimidation of negro voters and leaders, or, at best, as agitation for a 'negro vote' issue in local politics.

"No one would question the duty of a Grand Jury to investigate any and all election law violations. However, simple justice would demand that the Judge not single out the negro people for particular investigation. If we seriously wish to enforce the old law against hiring workers for canvassing or influencing voters, then let us start by indicting our U. S. Senators, Congressmen, and Governors and almost all elected State officials.

"If we overlook the mountain of white candidates and campaign workers who have violated this old law, to investigate the mole hill of few negro campaign workers, then truly we are manipulating the law in a manner to persecute the few.

"This is the type of political-legal action which brings down ridicule and demands for civil right legislation against the South.

"Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

"It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the negro people in this community.

"It seems incredible that all three of our Superior Court Judges, who themselves hold high political office, are so politically naive [naive?] as to actually believe that the

negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some negro leaders.

"If anyone in the community be free of racial prejudice, it should be our Judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office.

"It further seems the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters.

"However politically popular the judges' action may be at this time, they are employing a practice far more dangerous to free elections than anything they want investigated."

The "Open Letter to the Grand Jury" read as follows:

"Pursuant to the request that the general public furnish to you information concerning 'bloc voting' in this county, I wish to furnish you with the following information.

"For many years, even for decades, our newspapers, law enforcement agencies, and courts have permitted a situation to develop in Bibb County which is so dangerous that I feel it imperative to call it to your attention at this time.

"I refer, of course, to that gigantic 'bloc vote' which is controlled by a handful of men known as The Bibb County Democratic Executive Committee. The situation in this county has so deteriorated that almost no one can obtain any local office without first securing the sanction and approval of this handful of people.

"Accusations are made that large sums of money are paid in to this group of people in every election. Indeed

it is even alleged that a public official seeking re-election and who has no opposition, must nevertheless pay over hundreds upon hundreds of dollars to this group of leaders who control the democratic bloc vote in Bibb County. Accusations are further made that this group of leaders, known as the Bibb County Democratic Executive Committee, openly and notoriously violates the law of this State by soliciting the voters of this community on behalf of those nominees securing their approval. Reports further circulate that this small group of leaders receive money supposedly for the purpose of advertising, printing, etc., but no satisfactory explanation is ever made to the public of the means by which this organization is able, year after year, decade after decade, to control a mass vote in Bibb County.

"Obviously, it is not in the best interest of the people of Bibb County to always deliver a bloc vote to the selectees of this group of political leaders in the community.

"The Grand Jury should delve deeply into the means by which a select group in this community is able to brain wash the voting public so that the voters, like sheep, blindly bloc vote for certain sponsored candidates of the Democratic Executive Committee. Certainly this most notorious and long existing bloc vote overshadows and overpowers any other sub bloc of votes which may be under inquiry in the process of the current investigation.

"I assure the members of the Grand Jury that my office at all times stands ready to fully cooperate with the Grand Jury in the gathering of evidence and I can further assure the Grand Jury that if it takes under advisement an inquiry into the gigantic democratic bloc vote in this county, I will, personally, enter with great zeal into such an investigation on behalf of the Grand Jury."

The statement of July 8, 1960, after the citation for contempt brought against the defendant, stated:

"My defense will be simply that I have spoken the truth. Anyone who will read, point by point, my statements concerning the Judges' charge will find those statements true.

"The Judges were wrong to use 'Negro Bloc voting,' the campaign slogan of Talmadge, and similar phrases as language with which to instruct a Grand Jury. When I stated 'It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office' was it contempt of court or was I pointing out the truth?

"When I said 'If anyone in this community be free of racial prejudice, it should be our Judges' was this contempt of Court or was I stating a truth?

"The Judges were morally wrong to suddenly order a Grand Jury to single out the Negro political leaders for indictments under a forgotten law which even judges have violated. When I said 'It further seems that the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters' was this contempt of Court or was I speaking the truth?

"The Judges were professionally wrong in involving the Court in political affairs. I stated that the Judges' charges 'threaten political persecution carried out under the guise of law enforcement' and further that 'this action appears either as a crude attempt at judicial intimidation of Negro voters and leaders, or, at best, as agitation for a "Negro Vote" issues in local politics.' Can anyone read the Judges' instructions for indictments under the old 'influencing voters' law and honestly say no political persecution is threatened when almost all office holders have violated this law? Can anyone read the long charge reciting political rumors and charges against Negro leaders and voters and honestly say there is no appearance of any attempt at intimidation of Negro voters and leaders? Like

wise can anyone deny such a charge and such an investigation in the midst of local political races agitates a 'Negro Vote' issue?

"If the Court will permit I believe that many thousands of witnesses would testify in my behalf that they drew the same conclusions as I from the language used by the Judges in their charge.

"Is it just, or even fair play, for the Judges to say they intended no threat, no intimidation, no agitation and therefore it is contempt of court to publicly state honest, sincere conclusions and practical effects caused by the language of the charge.

"Two wrongs do not make a right, and the Judges are wrong to cite me for contempt. I cannot view the Judges' action in any light except to believe I am to be prosecuted for daring to criticize the Judges and for speaking the truth.

"I had hoped that the entire ill-will and race agitation stirred up by the Judges' charge would be permitted to die after a face-saving presentment by the Courts' Grand Jury. To this end I remained silent despite grossly false and discrediting conclusions presented. Now it appears that the Judges want the satisfaction of find [sic] me in contempt of court, but if they so do, they are in effect saying that the court has done no wrong because the court itself finds it has done no wrong."

The contempt citation, as amended, charged the publication of these three statements of the defendant, each as a separate contempt of the court, and charged that the language used was designed and calculated to be contemptuous of the court, to ridicule the investigation ordered by the charge, to hamper, hinder, interfere with, and obstruct the said grand jury and the court in the investigation order, and that the news release referred to

was issued from the Bibb County sheriff's office located in the Bibb County Courthouse, the same building in which the judge charged the grand jury, and that the language imputed lack of judicial integrity to the three judges of the Superior Court of the Macon Judicial Circuit. Count 2 of the citation charged that the letter entitled, "An Open Letter to the Bibb County Grand Jury" was delivered by the defendant to the bailiff of the grand jury at the time the grand jury was investigating the matters set forth in the charge of the court and while the grand jury was actually holding a hearing thereon in the Grand Jury Room of the Bibb County Courthouse, and that the defendant instructed the bailiff to deliver the letter to the foreman of the grand jury, which was done, and that it was at or about the same time he delivered the letter to the grand jury that he released copies to the news media, and that this open letter to the grand jury was designed and calculated to be contemptuous of the court and to ridicule the investigation and to impute lack of judicial integrity to all three judges of the Superior Courts of the Macon Judicial Circuit, and that at the time the letter was issued the grand jury had not completed its investigation into the matters about which it had been instructed by the court. The contempt citation was further amended to add to each count that the respondent was sheriff of Bibb County, a full-time employee of the county, and as such an officer of the Bibb Superior Court. Count 1 was further amended to charge that at the time the defendant issued his "news release" the grand jury had before it records and documents relating to primaries and elections in which the respondent had taken an active part both as a candidate and as an active supporter of a candidate, and that the grand jury had been charged to investigate said elections, and further that the news release was brought to the attention of the judges of the Bibb Superior Court and to the members of the grand jury as a result of publication of the statement by the

various news media, and that the statement as so published was actually read by members of the grand jury while they were engaged in the investigation of the matters about which the court had charged them, and that the issuing, publishing, and causing to be published of the statement by the defendant in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further presented a clear, present, and imminent danger to the proper administration of justice in the Bibb Superior Court. The amendment to count 2 further charged similarly that after the news release was read by the members of the grand jury, while engaged in investigation of the matters, that at the time defendant caused to be delivered to the grand jury an "Open Letter to the Bibb County Grand Jury," the grand jury had before it investigation records and documents relating to primaries and elections in which the defendant had participated, and that the jury was then in fact investigating such elections, and that the grand jury had determined to call him as a witness and did so later on. Further amendment to count 2 charged that the publishing and causing to be published of the letter amounted to a course of action designed and calculated to "ridicule, embarrass, tamper, delay, and interfere with and obstruct the Grand Jury in said investigation ordered by the court, and was further designed and calculated to ridicule the investigation and tamper, hinder, delay and interfere with the Court in its instructions to the Grand Jury," and, further, that the delivery of the letter to the grand jury and the publishing and causing to be published in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further created a clear, present, and imminent danger to the

proper administration of justice in the court; and that the preparing and delivering of the letter to the grand jury was an attempt by the defendant on his part to ridicule the investigation which was in progress, and did in fact interrupt, delay, and interfere with the business of the grand jury while the grand jury was taking testimony of witnesses regarding the investigation, and that the reading and consideration of the contents of the letter did actually interrupt, delay, and interfere with such investigation, and did thereby create and present a clear, present, and imminent danger to the investigation being conducted by the grand jury. The amendment to count 3 made similar charges concerning the statement made by the defendant on July 8th, charging that the issuing, publishing, and causing to be published of the statement presented a clear, present, and imminent danger to the investigation by the grand jury into the matters which the court had instructed it to investigate, and further presented a clear, present, and imminent danger to the proper administration of justice in the court of the handling of the contempt citation against the respondent, which citation was then and there pending in the Bibb Superior Court, and that the statement was actually read by the members of the grand jury while they were continuing their investigation of the matters about which they had been charged, and was actually read by the judges of the Bibb Superior Court. The amendment to count 3 further charged that this published statement was a course of action by the defendant designed and calculated to hinder, interfere with, and ridicule the grand jury in continuing its investigation of the matters about which the court had charged the jury, and this in and of itself presented and created a clear, present, and imminent danger to the proper investigation and proper conduct of the business of said grand jury. The "Statement" of July 8th was also charged to have been circulated by the

defendant to the news media in Macon, which the answer of the defendant impliedly admits.

The defendant filed 19 general or special demurrers to each of the three counts of the contempt citation, and to the citation as finally amended filed 6 additional demurrers to each count and renewed the original 19 demurrers to each count, for a total of 75 demurrers. The court overruled both the renewed and additional demurrers. After a hearing, the defendant was convicted on each count and sentenced to 20 days in jail on each count, to be served concurrently, and to pay a fine of $200 on each count.

The defendant excepted to the overruling of the renewed and additional demurrers, and further excepted to the order and judgment of the court adjudging him in contempt as being contrary to law and charging that the court should not have found him guilty of contempt of court on the basis of the facts submitted.

At the request of the president of the Macon Circuit Bar Association, the Hon. Charles J. Bloch and the Hon. T. Reese Watkins filed a brief as amici curiae, upon appeal, under Rule 4 of this court.

Bell, Judge. **At the outset may it be explained that the writer prepared and is publishing for the court the opinion and judgment with respect to counts 1 and 3 of the contempt citation. These counts appear here in divisions 1 and 3 respectively. Since the majority of the court en banc agreed with the views expressed by Judge Townsend upon count 2 of the citation, he has prepared the majority view on this count, and his expressions will appear in division 2 of the opinion.**

1. Reduced to its basic elements, the present appeal brings into conflict the constitutional right of freedom of

speech, on the one hand, and the right of the courts to carry on their proper functions without any improper interference. Contempt of court has been variously defined; in its broad sense it means disregard for or disobedience of the order or command of the court, but it also includes interruption of the proceedings by disorderly behavior or insolent language either in its presence or so near thereto as to disturb its proceedings or impair due respect for the authority, justice, or dignity of the court. 12 Am. Jur., Contempt, § 2, p. 389. Thus, "any conduct that in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of judicial function" is a contempt. Ex parte Earman, 85 Fla. 297, 95 So. 755, 31 A. L. R. 1226. "A constructive, indirect, or consequential contempt is one committed outside the presence of the court; it is an act done at a distance, which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice." 17 C. J. S. 6, Contempt, § 4. Furthermore, whatever manifestly tends to constitute an interference with the proper exercise of the duties and functions of a grand jury while engaged in the consideration of such matters as may properly come before it constitutes contempt. 17 C. J. S. 4, 5, § 30 c, and cases there cited.

(a) Section 24-105 of our Code provides in part that the powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of the courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the courts in their official transactions, and the disobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts. This statute was enacted in 1892, apparently pursuant to Article I, Section I, Paragraph XX

(6376) of the Constitution of the State of Georgia of 1877, which provided, "The power of the courts to punish for contempt shall be limited by legislative acts." This same provision was written into the Constitution of 1945, and is codified in Code § 2-120. Notwithstanding the wording of Code § 24-105, the Supreme Court has held and reiterated that the constitutional provision does not confer authority upon the Legislature to define what are contempts, and to declare that the court shall have jurisdiction over no acts except those specified, because the power to punish contempts is inherent in every court of record. The Supreme Court has held that Code § 24-105, insofar as it seeks to limit the jurisdiction of a constitutional court to punish contempts to certain specified acts, is not binding upon the courts, and they may go beyond the provisions of the statutes in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly invade them. Bradley v. State, 111 Ga. 168 (1, 2) (36 S. E. 630); 50 L. R. A. 691; 78 Am. St. Rep. 157; and Atlanta Newspapers v. State of Georgia, 216 Ga. 399 (1), 402-3 (116 S. E. 2d 580). Part of the briefs of both parties are devoted to the question as to whether the present contempt occurred so near to the court as to constitute a contemptuous interference with its processes. Under the decisions of the Supreme Court, we do not regard it necessary to determine whether or not the contempts charged fit within the definition of Code § 24-105, because the constitutional courts are not to be limited as to what is a contempt by the acts of the Legislature.

(b) It appears clear that whether the contempt be regarded as one of the court or of the grand jury, the result is the same, since if there is a contempt of the grand jury, this is also a contempt of the court, as the grand jury is a constituent part of the court, and anyone whose conduct interferes with or has a tendency to obstruct the grand jury may be found to be in contempt. Commonwealth v. Mc-

Nary, 246 Mass. 46, 140 N. E. 255; 29 A. L. R. 486-7; 12 Am. Jur. 403, Contempt, § 21. The grand jury is but an arm of the court. Gates v. State, 73 Ga. App. 824, 826 (38 S. E. 2d 311).

"If there is any one thing in democratic society which must be presumed conclusively, until judicial determination to the contrary by a court of law of impeachment, it is the integrity of the courts. The structure of our government demands that freedom of speech be subordinated to the welfare of society in the respect for the integrity and sanctity of our courts. A judgeship is an institution and an ideal, and when a judge is accused of wrongdoing it is more than an attack upon an individual. It is an attack and an undermining of one of the most important supports of the government. If a judge is corrupt or incompetent, there may be a remedy by suit, prosecution, impeachment, or at the polls. The public policy of democracy is that the judiciary shall not be dragged in the mire because of a real or a supposed wrong. If such could be done, and results confined to punishing the judge, the rule might be different, but when it causes disrespect for the high office which the judge seeks to personify, and subjects it to ridicule and contempt, the tendency is for men to turn their backs on the institution created for the safety and well being of mankind and take the law into their own hands. The constitution does not guarantee freedom to 'say what we please' about a judge or a court. Contempt of court is an abuse of such a privilege. **In re Fite** (11 Ga. App. 665), supra. The right to define and punish for contempt is inherent in constitutional courts, so the definition of contempt in this case, involving the superior court, is not confined to the Code definition by which courts which are not constitutional are governed; and the question whether the conduct complained of interfered with the administration of justice in a pending case is not involved. **In re Fite**, supra; **Bradley v. State**, 111 Ga. 168

(36 S. E. 630, 50 L. R. A. 691, 78 Am. St. R. 157); **Cobb v. State**, 187 Ga. 448 (200 S. E. 796). In view of the radical language complained of in this case, imputing lack of virtue and integrity to the judge of the court for an act done in his official capacity, and in view of the law as laid down by the decisions cited, we hold that there was no error in overruling the pleas to the jurisdiction and in bar, and in adjudging the respondent in contempt." **Cobb v. State**, 59 Ga. App. 695, 701 (2 S. E. 2d 116). In the **Cobb** case there was considerable intemperate language used by the defendant in a book published by him which was circulated in the counties comprising the Ogeechee judicial circuit, in which, inter alia, the defendant had written that the trial judge was "as much a judicial prostitute as is any loose wretch who walks the streets a moral prostitute."

"The constitutional right of freedom of speech or of the press was not intended as a refuge for the contemner or slanderer or libeler. Contempt of the court, slander, and libel constitute **abuses** of the privilege, for the commission of which the offenders are justly and lawfully punishable." In re Fite, 11 Ga. App. 665 (6) (76 S. E. 397).

"The power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone and respect for the law is destroyed. Other departments of the government may outlive unjust criticism, and may still render service to the people, even when unfairly assailed, but when confidence in the courts is gone, respect for the law itself will speedily disappear, and society will become the prey of fraud, violence, and crime. This one element in government and society which the people desire above all things else to keep from the taint of suspicion is the administration of justice in the courts." Ibid, p. 680.

The court below has adjudged the defendant in contempt upon all three counts. In view of the language

used and the dissemination of it by the defendant through the public news media, we cannot say that the conviction was in error upon counts 1 and 3. The language of the news release, the basis of count 1 of the citation for contempt, charged the judges of the Superior Court with threatening political persecution under the guise of law enforcement, and further charged them with bias against a minority group, and compared the effect of the instructions to the grand jury with the attempted intimidation assed by the Ku Klux Klan against this group. It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge.

2. However, as applied to count 2, it is very clear from an examination of Townsend v. State, 54 Ga. App. 627 (188 S. E. 560); Atlanta Newspapers, Inc. v. State of Georgia, 216 Ga. 399, supra; McGill v. State, 209 Ga. 500 (1) (74 S. E. 2d 78); Adams v. State, 89 Ga. App. 882 (81 S. E. 2d 507); Clark v. State, 90 Ga. App. 330 (83 S. E. 2d 45); Vines v. State, 69 Ga. App. 175 (24 S. E. 2d 864); and Bridges v. California, 314 U. S. 252 (62 S. Ct. 190, 86 L. Ed. 192), that the necessary attribute of tendency to obstruct the administration of justice has not been met. In the "Open Letter to the Grand Jury" the defendant in no wise suggested that the instructions of the court in regard to bloc voting were wrong or done with improper motive; he did not dwell on this subject at all. He did urge an investigation of the influence of the Democratic Executive Committee and suggest that bribes were exchanged for nominations by this group. He accused committee members of violations of law. He urged investigation of certain alleged practices in the same general language the court had used in dealing with

the Negro bloc vote. This letter might have been considered by the court along with the press release as showing that the motives of the defendant were to impugn the court's integrity, and as an additional reason for holding him in contempt on count 1, but count 2 alone contains no matter at all which would tend to obstruct the investigation by the grand jury of the matters set out in count 1. It deals with irrelevant material. Perhaps it was written in a satiric manner, and was intended to imply that the court was misdirecting the course of the grand jury's inquiry, but this does not appear from an examination of the letter, and there is nothing in the letter which would in any way impede the investigation as related to Negro bloc voting. Count 2 must stand alone to meet the test of whether it constitutes a "clear and present danger to the administration of justice" (**McGill v. State of Georgia**, 200 Ga. 500, supra) and it fails to meet this test. The Court erred in holding the defendant in contempt as to count 2.

3. (a) The third count of the citation for contempt arose out of the statement of July 8th which reiterated in large part the statements made in the original news release which was the basis of the first count, and charges the judges with being morally and professionally wrong, and again reiterates charges of judicial intimidation and political persecution. Although the defendant labeled the statement of July 8th as his "defense", the extensive reiteration of his previous assault upon the court served to compound his contumacious conduct. When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a contempt.

The first two demurrers of the defendant to counts 1 and 3 of the citation for contempt charging that they set forth

no grounds for holding him in contempt nor show any acts for which he should be convicted were properly overruled.

(b) Demurrers 3, 4, 5, and 6 to counts 1 and 3 charge that the citations in effect fail to allege any acts of the defendant which actually amounted to or accomplished an obstruction of the administration of justice, or that the act or acts formed a clear and present danger of obstructing the administration of justice. The trial court properly overruled these demurrers, for the success or failure of the attempt to interfere is not the test. That the attempt is not successful is no defense, since it cannot be known what, if any, effect it had. People v. Doss, 382 Ill. 307 (46 N. E. 2d 984). See also, 12 Am. Jur. 417, Contempt, § 37, and cases there cited. With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding.

(c) Demurrer 7 to counts 1 and 3 charges that there is no allegation that the statements were false or untrue, and that lacking such allegation the citations are fatally defective. This demurrer confuses the law of defamation with that relating to contempt of court. It is possible that a statement or act might be true but have no relevance to the proceeding and tend to obstruct or impair the administration of justice in a particular case. Furthermore, many of the statements made by the defendant as charged in these counts are matters only of opinion as to which obviously there can be no absolute test or proof of truth or falsity. The trial court properly overruled demurrer number 7 to counts 1 and 3.

(d) Demurrer number 8 to counts 1 and 3 raises the question of freedom of speech guaranteed by the Consti-

tution of the State of Georgia, codified in Code § 2-115, which provides, "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty." One who is guilty of contempt of court cannot claim the protection of this section. **In re Fite**, 11 Ga. App. 665 (6), supra. Furthermore, the abuse of liberty of speech and freedom of the press are not guaranteed by this section. **McGill v. State**, 209 Ga. 500, supra. See also the discussion in division 1 of this opinion.

(e) Demurrers numbered 9 and 10 to counts 1 and 3 in effect raise similar issues citing the United States Constitution. We hold that a punishment for contempt does not violate the due process, freedom of speech, or the equal protection clauses of the United States Constitution.

(f) The 11th demurrer to counts 1 and 3 contends that the act of the judge in charging the grand jury was a non-judicial act as distinguished from a judicial act, and that the criticism by the respondent with respect thereto was, therefore, not such an act as could constitute a contempt of court. There is no merit to this demurrer, for the act of the judge in charging the grand jury is a judicial act. Demurrer number 11 was properly overruled.

(g) Demurrer number 12 to counts 1 and 3 contends that the citations set forth no ground for holding the defendant in contempt, for the reason that as sheriff he has both the right and the duty in the exercise of his executive functions to determine what the public safety and tranquility demand, and that the citation is void because it fails to negative in any way that he was performing such function.

While a sheriff may have a right and a duty in the exercise of his functions to determine what the public

safety and tranquility demand, this right is not vested exclusively in the sheriff, nor is it absolute, and where, as here, what he did is held to be a contempt of court, the vestures of his office will not shield him nor does it bestow license upon him. No criminal intent is necessary for there to be a contempt of court, although the denial of contumacious intent, though not ordinarily a defense, may be considered in mitigation of punishment. 17 C. J. S. 54, Contempt, § 42. If the rule were otherwise, one in contempt might always purge himself by an assertion of good intention. State v. District Court of Seventh Judicial District, 76 Mont. 222, 246 P. 250. See also, 12 Am. Jur. 439, Contempt, § 73.

(h) Demurrer number 13 to counts 1 and 3 raises again the question of denial of due process, contending that the citations deprive him of due process of law, in that the court is proceeding to prosecute a matter concerning which it has no jurisdiction, since the acts occurred outside the court room and in the exercise of freedom of speech. This demurrer was properly overruled.

(i) Demurrer number 14 moves to strike the allegation in counts 1 and 3 to the effect that he was at all times during the contemptuous acts cited as sheriff of Bibb County. The fact that the defendant was in fact the sheriff of Bibb County at the time, and as such an officer and an arm of the court, was relevant to the inquiry, properly considerable by the court, and this demurrer was properly overruled.

(j) Demurrer number 15 contends as to count 1 that the part of the citation to the effect that the statement made by respondent was disseminated to the general public should be stricken, on the ground that it is entirely irrelevant and immaterial. But the release to the public of the contemptuous matter presented to the grand jury was relevant and material, and demurrer 15 to the first count was properly overruled.

(k) Demurrer number 15 to count 3 attacks the allegation again as to the location of the sheriff's office and charges that the allegation that the respondent appeared is too vague and indefinite to show where he appeared from or to whom he appeared. Reading this paragraph 3 of count 3 as a whole, we feel it is sufficiently definite. The other contentions were properly overruled. Special demurrers 16, 17, 18, and 19 to counts 1 and 3 are all without merit, and were properly overruled by the trial court.

(l) We now come to the six additional demurrers to counts 1 and 3 of the citation for contempt. The additional demurrers 1 and 2 are merely repetitious as to effect of others previously considered, and are without merit. Demurrer number 3 to the amended citation charges that the allegation that he is on the Bibb County payroll is irrelevant. This demurrer has no merit, and neither does the objection to the allegation that the defendant is an officer of Bibb Superior Court on the ground that it is a conclusion of the pleader. Demurrers 4, 5, and 6 to the citation as amended merely reiterate the attacks which we have previously passed upon, and were properly overruled. For the reasons indicated in this opinion, the exception to the judgment of convictions on counts 1 and 3 was also properly overruled.

We do not intend by this decision to hold that the opinions, the judgments, the proceedings of the courts, or the judges themselves, are under any and all circumstances exempt from objection or remonstrative criticism. But where, as here, the three judges involved acted jointly, and in their place proceeded within the ideals and the letter of the law, and where, as here, there were vitriolic attacks upon the motives, judgment, and biases of these judges, and all this carried on by the sheriff, an officer of the law and of the court, at times during which the grand jury properly had before it for consideration the charge of the

court, we can only conclude that the sheriff's intemperate actions constituted contempt and the convictions on counts 1 and 3 were proper.

The judgment is affirmed as to the conviction on counts 1 and 3 of the citations for contempt, but reversed as to the conviction upon count 2.

In division 1 of this opinion, Felton, C. J., Carlisle, Nichols, Frankum, and Jordan, JJ., concur, and Townsend, P. J., concurs specially.

As to division 2, prepared and delivered by Judge Townsend, Felton, C. J., Carlisle, Nichols, and Jordan, JJ., concur. Bell and Frankum, JJ., dissent.

In division 3, Carlisle, Nichols, Frankum, and Jordan, JJ., concur. Felton, C. J., and Townsend, P. J., dissent.

Wood v. State of Georgia, B-80.

Townsend, Presiding Judge. (Specially concurring as to Count 1.) 1. First, it should be stated that I concur in the judgment of conviction of the defendant as to Count 1, on the ground that the contents of the newspaper article was both contumnacious and sufficient to amount to an obstruction of the administration of justice. It must appear from the record to be both of these things. **Clark v. State of Georgia,** 90 Ga. App. 330 (2) (83 S. E. 2d 45). It was definitely contumnacious in that it accused the judges of "threatening political persecution under the guise of law enforcement", of "a crude attempt at judicial intimidation"; of "manipulating the law in a manner to persecute the few," as "shocking . . . the height of hypocrisy", and so forth. **This was sufficient to amount to an obstruction of the administration of justice.** The court's charge instructed the grand jury to inquire into certain rumored infractions of criminal law by means of traffic in, and the purchase and sale of bloc votes between some candidates

for office and some Negro leaders in elections where it did not appear that any issue was involved such that their self interest would be a factor in their decision. The grand jury was in session and presumably investigating or about to investigate the matter at the time the article was published. The grand jury is an arm of the superior court and the law and a part of the machinery of government. **Gates v. State**, 73 Ga. App. 824 (38 S. E. 2d 311); **Cook v. Sikes**, 210 Ga. 722 (82 S. E. 2d 641). In **Atlanta Newspapers v. State of Georgia**, 216 Ga. 399 (116 S. E. 2d 580) the court, after quoting from **McGill v. State of Ga.**, 209 Ga. 500 (1) (74 S. E. 2d 78) to the effect that an abuse of the right to freedom of speech which results in obstructing the administration of justice will subject the abuser to punishment for contempt of court, held that the newspaper article in question there was not an abuse for the reason that at the time when it was published there was no reasonable duty on the newspaper to anticipate that the article in question would come to the attention of the jurors or otherwise interfere with the trial of the case.

There must always be a balance between the right of freedom of speech and the right to unimpeded justice. To paraphrase the Apostle, there is a time to speak and a time to keep silent. The time to speak, even to accuse the judge of hypocrisy and moral laxness, justly or unjustly, could well exist, say, during a political campaign when a candidate for office is arguing against the re-election of that judge. It could exist at other times, when no election is imminent, but under the general right of a citizen of the State to criticize his elected officials. When it cannot exist is when the words are directed toward the impeding of a judicial proceeding presently in progress. It is implicit in the decision in the Atlanta Newspapers case, supra, that the very same article, published at a time and in a place where it would tend to influence the jury, would constitute a contempt. I agree that Count 1 relating to a

newspaper article written by the sheriff, a man associated in the minds of many lay people with the pronouncement as well as the enforcement of the law, accusing the judge of instructing the grand jury to ferret out certain crimes relating to possible bribery, not in accordance with his duty to so instruct the jury, but as a cover for personal reasons aimed at stirring up race prejudice, is a contempt of the court and the grand jury necessarily calculated to impede the administration of justice, and should be punished as such.

"Judges are not exempt from public criticism of their official acts or conduct. It is only when such criticism obstructs the administration of justice that they constitute contempt of Court." **Townsend v. State of Ga.**, 54 Ga. App. 627 (188 S. E. 560).

2. (Dissenting as to Count 3.) In Count 3 of the rule for contempt the court found that the defendant committed an additional contempt when he issued a news release after the citation for contempt had been served on him, in which he stated publicly his defense against the attachment for contempt, contending that he spoke no more than the truth and that he had a right to speak the truth. The defense necessarily dealt with the charge, and throughout its body reiterated most of what the defendant had previously stated. It begins: "My defense will be simply that I have spoken the truth", which indicates that the contents of the contempt citation, including the prior statements made by the defendant, had already been made public. We have held in this opinion that, as to a contempt, truth is not necessarily a good defense, but this fact did not deprive the defendant of relying upon it and urging it before the court. Whether or not he later interposed the same defense that he announced he would urge, he had a right to urge it before the court, and it certainly amounted to no obstruction of justice for him to state outside of the court that he intended to do so.

This statement contains no new defamatory or obstructive material, and it is but a repetition of the original statements on which the contempt charge was made and an analysis of them in line with the proposed defense to be urged. Whether it amounted to a republication within the rule relating to slander and libel is completely irrelevant, and in my opinion the court in holding that this is an additional contempt is departing from the "clear and present danger" rule recognized by our courts and by the majority opinion. It was the court itself which, and we hold correctly, gave the statement status as a case in court when he cited the defendant, and there is and can be no rule of law which prevents a defendant in a judicial proceeding from making public his defense, whether in or out of court, on the ground that the publication of such defense is obstructive to the administration of justice. It is obvious that the defendant could file this same defense in answer to the citation and that the newspapers could publish it; therefore the defendant could relay its contents directly to the newspapers for the purpose of publication. In my opinion the court erred in holding the defendant in contempt under Count 3. All citizens against whom charges of any nature are brought must be accorded the right to defend, and any intimidation tending to restrict such right is a step toward totalitarianism.

Felton, Chief Judge, joins in this dissent.

Bell, Judge, dissenting as to division 2 of the opinion. For the reasons indicated in divisions 1 and 3 of this opinion, I feel the conviction upon count 2 should also be affirmed. In my opinion the "Open Letter to the Grand Jury," which formed the basis of count 2 of the citation for contempt was properly found by the court below to interfere with or obstruct the grand jury in its deliberations. The sum total of this letter reveals an attempt to

divert the grand jury from consideration of the charges given to it by the judge and an attempt to aim the attention of the jury at alleged violations of law by the Bibb County Democratic Executive Committee and away from the matters which the judge had charged the grand jury to investigate. In this respect it is certainly the proper function of the judge to charge the grand jury, and not the prerogative of the sheriff either to charge the jury or to interfere with the judge's charge to it.

Judge Frankum agrees with these views and has directed that he be recorded as concurring with this dissent to division 2 of the opinion.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 369.

JAMES I. WOOD,
Petitioner,

vs.

THE STATE OF GEORGIA,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Georgia.

BRIEF

For Respondent in Opposition.

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BRIEF

For Respondent in Opposition.

I.

OPINION BELOW.

The opinion of the Court of Appeals of Georgia, affirming petitioner's conviction on two counts, and reversing on one count, is reported below as **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961). The Supreme Court of Georgia, the highest state court, denied certiorari on May 22, 1961, without opinion. Motion for reconsideration was denied on June 8, 1961.

II.

JURISDICTION.

The jurisdiction of this Court is invoked by petitioner under 28 U. S. C. 1257 (3).

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Constitutional and statutory provisions pertinent to this case are as follows: Ga. Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann., Sec. 2-120); Ga. Code Ann., Sections 34-9907, 34-1907.1, 24-104, 24-105, 24-2813, 24-2804, 24-2814, 59-304, 18 U. S. C., Sections 401, 1504, 597. These provisions are set forth in an Appendix hereto.

IV.

QUESTION PRESENTED.

Whether a Georgia sheriff, an officer of court, sworn to execute all processes of the courts and to attend upon the grand jury, is denied constitutional rights of freedom of speech by a conviction of contempt based upon his having published, from his office in the same court house where a county grand jury was deliberating, statements calculated to discredit the Court's charge previously given and to obstruct, frustrate and impede an investigation which the grand jury was at that very time conducting.

V.

STATEMENT OF THE CASE.

Respondent does not accept as complete and accurate the Statement contained in the Petition for Certiorari.

On June 6, 1960, the beginning of the June Term of Bibb County Superior Court, one of the three judges of that Court delivered a charge to the Grand Jury just impaneled in which it was instructed to investigate charges relative to criminal violations of the voting laws. The charge pointed out that:

> "There are accusations that candidates for public office have paid large sums of money to certain leaders of the Negro in an effort to gain their favor and get the Negro vote. There are accusations that candidates and their supporters have paid, and these leaders of the Negroes have accepted, money for the purpose of influencing the Negro people to bloc vote for certain candidates."
>
> * * * * * * *
>
> "There are also accusations that certain Negro leaders after having met with a candidate and endorsed his candidacy have changed and supported an opposing candidate who put up a large sum of money. This creates an unhealthy, dangerous and unlawful situation."

The Court then instructed the jury with respect to Georgia Code Sections declaring it a crime to buy or sell votes (Sec. 34-9907) or to possess ballots or any likeness thereof (Sec. 34-1907.1).

The jury was directed specifically that,

> "Some questions which this Jury should have answered in your investigation of elections are: Was the Negro vote delivered in bloc to any candidate or candidates? If so, who delivered it and how was it

done? What contact did the candidates or their supporters have with the Negro group or its leaders? What money was involved, if any? How was the money used? What workers were employed? What promises did the candidate make, if any, in order to obtain the bloc vote?"

The Court then concluded by admonishing the jury as to the need for respect for the laws, and their enforcement against all violators. The grand jury was also instructed to consider the necessity for any additional laws or amendments to existing laws.

The next day, June 7, while the grand jury was considering these very matters given it in charge, petitioner, sheriff of Bibb County, released to local news media a press statement in which he accused the court of "persecution", "race agitation", a "crude attempt at judicial intimidation of Negro voters and leaders", and "political-legal action".

More specifically, petitioner charged that,

> "Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.
>
> It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the Negro people in this community.
>
> It seems incredible that all three of our Superior Court judges, who themselves hold high political office, are so politically naive as to actually believe that the Negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some Negro leaders.
>
> If anyone in the community be free of racial prejudice, it should be our judges. It is shocking to find

> a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office."

This press release was made in the sheriff's office located in the same Courthouse in which the grand jury was deliberating (R. 27), and was read by members of that jury during their deliberations thereon (R. 112).

The very next day, June 8, petitioner also delivered to the bailiff stationed at the entrance to the grand jury room, "An Open Letter to the Bibb County Grand Jury", in which the jury was in effect told that it was really the Bibb County Democratic Executive Committee which was guilty of corruption in the purchasing of votes.

Subsequently, the solicitor general of the circuit presented to another judge of Bibb Superior Court, an application for attachment for Contempt (R. 10) which, as later amended (R. 27), charged petitioner with contempt of court in two counts, Count I relating to the press release, and Count II relating to the "Open Letter". This petition was filed and rule nisi issued thereon on July 7. On July 8, petitioner released to the press and other news media, another statement in which he again repeated all his charges against the judges contained in his first statement. He concluded by saying that his charges were the truth, that he was being prosecuted for speaking the truth, and that the judges "want the satisfaction of finding me in contempt of court . . ."

Here again, at the same time this press release was made, the grand jury was still in session considering the matter, and the statement was also read by them (R. 112).

The application was again amended so as to add a third count charging petitioner with contempt in issuing this last statement.

As finally amended, the application for contempt charged that these actions of petitioner constituted "a

clear, present and imminent danger to the investigation being conducted", and that it was designed to "hinder, interfere with and ridicule the said grand jury in continuing its investigation . . ."

Petitioner filed demurrers (R. 42, 98) and response (R. 110). The application was heard on the pleadings and written stipulations (R. 111-115), following which the Court rendered judgment adjudging petitioner guilty of contempt on each count, and imposing a fine on each count of $200.00, and 20 days imprisonment, the latter to be served concurrently (R. 116). Although one defense raised by the response was "truth", petitioner made no offer to prove it at the hearing.

On writ of error to the Court of Appeals of Georgia, the conviction was affirmed on Counts I and III, relating to the two press releases, and reversed as to Count II, relating to the "Open Letter" delivered to the grand jury. **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961).

With respect to Count I, the Court of Appeals declared:

> "It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge."

As to Count III, the Court said:

> "When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a contempt."

VI.

ARGUMENT.

In view of several grossly misleading statements contained in the petition, respondent deems it important at the outset to state clearly what is and is not involved in this case.

To begin with, it is nothing less than demagoguery and a species of racial prejudice in reverse to say, as petitioner would have it, that, "The final decision in this case will determine whether or not state courts and grand juries may be used to intimidate Negro voters of southern states . . ." (Petition, p. 8). This is not a voting case. No Negro or anyone else has been deprived of any right to vote, or intimidated with respect to voting. Nor does it appear that petitioner has any standing to assert himself as a chosen champion of voting rights. The grand jury charge involved in this case was not directed to voters as such, but against corrupt political bosses who violate state laws by buying votes in the market place, a practice illegal under state law[1] as well as under federal.[2]

Second, it is likewise not true that, "The decision in this case holds that state courts . . . are not limited in their power to define contempt by the provisions of the Constitution of the United States . . ." (Petition, p. 6).

In the leading Georgia case of **McGill v. State**, 209 Ga. 500, 74 S. E. 2d 78 (1950), the Georgia Supreme Court recognized as controlling authority, the decisions of this

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[1] Ga. Code Ann., Sec. 34-9907. See Appendix.

[2] 18 U. S. C. A. 597. See Appendix.

Court establishing "clear and present danger" as the rule of decision in contempt cases. The common law "scandalizing the court" test was expressly rejected.[3]

Even prior to this Court's decision in **Bridges v. California**, 314 U. S. 252, 86 L. Ed. 192 (1944), the Georgia Court of Appeals had held in 1936 that, "There is a distinction between acts which consist of publications, or otherwise, not made in the presence of the court, which merely evince disrespect or contempt for the court or judge, **and acts of such character which interfere with or obstruct the administration of justice** . . ."[4]

In the present case, the amended application for contempt averred in each count that the conduct complained of "did thereby create and present a clear, present and imminent danger to the investigation . . ." (R. 91). The decision of the Court of Appeals was predicated upon a finding of obstruction of the administration of justice, rather than a purpose to vindicate a wounded judicial conscience.

What this case does involve is a situation where, during a pending investigation by a grand jury into violations of state voting laws, a sheriff, an officer of court, issues a series of statements violently criticizing the judge's charge to the grand jury, and in effect re-charging the grand jury himself in such manner as to be calculated to impede, frustrate and obstruct the grand jury's assigned function.

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[3] 200 Ga. at 504

[4] Townsend v. State, 54 Ga. App. 627, 632, 188 S. E. 560 (1936) Other cases applying the same principle are Clark v. State, 90 Ga. App. 330, 83 S. E. 2d 45 (1954), and Adams v. State, 89 Ga. App. 882, 81 S. E. 2d 507 (1954), and see Atlanta Newspapers, Inc. v. State, 101 Ga. App. 105, 113 S. E. 2d 148 (1960), applying the clear and present danger rule.

As stated above, respondent does not deny the binding effect of **Bridges v. California,** supra; **Craig v. Harney,** 331 U. S. 367, 91 L. Ed. 1546 (1947), and **Pennekamp v. Florida,** 328 U. S. 331, 90 L. Ed. 1295 (1946).

But the manifest difference is that whereas all those cases involved either statements calculated **merely to influence the judge**[5] or else comments on judicial action **already taken,**[6] the present case concerns language uttered by a public officer in the court house calculated to influence the grand jury in an investigation which it was at that very moment considering. While a judge is "expected to be a man of ordinary firmness and character",[7] there is no such presumption as to jurors.[8] There has been no case to come before this Court subsequent to the Bridges case involving a jury trial,[9] unless it be **Maryland v. Baltimore Radio Show,** 338 U. S. 912, 94 L. Ed. 562 (1950) but even in that case, the trial was not in progress when the publication was made. This, of course, is not to say that the clear and present danger test does not apply to jury trials,[10] but obviously, it necessarily follows that what would not constitute such a danger in a non jury matter might well do so in a pending jury case. The complex system repre-

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[5] Bridges v. California; Craig v. Harney.

[6] Pennekamp v. Florida (328 U. S. at 348). See 41 Ill. L. R. 690 (1947).

[7] Justice Holmes in Toledo Newspaper Co. v. United States, 247 U. S. 402, 424, 62 L. Ed. 1186 (1918).

[8] See Comments, 90 U. Pa. L. R. 617 (1942); 19 N. Y. U. L. Q. 307, 310 (1942); 45 Mich. L. R. 513 (1947); "A Re-Examination of Bridges v. California", 23 Alb. L. R. 61 (1959).

[9] Notre Dame L. R. 165 (1959). See also concurring opinions of Justices Jackson and Frankfurter in Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 740 (1951).

[10] 23 Alb. L. R. 61 (1959).

sented by the rules of evidence bear mute testimony to this fact.

"Clear and present danger" does not mean that "trials are like elections, to be won through the use of the meetinghall, the radio and the newspaper",[11] and,

> "It does not follow that public comment of every character upon pending trials or legal proceedings may be as free as a similar comment after complete disposal of the litigation."[12]

Moreover,

> "When a case is finished courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."[13]

It is well settled that, "The grand jury is an arm of the Court, and its **in camera** proceedings constitute a judicial inquiry".[14] The grand jurors, bailiffs, marshals, and similar persons are officers of the Court and subject to discipline,[15] and in this respect, it is equally well-settled that

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[11] Bridges v. California, supra (314 U. S. at 271).

[12] Pennekamp v. Florida, supra (328 U. S. at 346).

[13] Patterson v. Colorado, 205 U. S. 454, 463, 51 L. Ed. 879 (1907).

[14] Levine v. United States, 362 U. S. 610, 4 L. Ed. 2d 989 (1960); U. S. v. Smyth, 104 F. Supp. 383 (D. C. Cal. 1952); Gates v. State, 73 Ga. App. 824, 38 S. E. 2d 311 (1946); Cook v. Sikes, 210 Ga. 722, 82 S. E. 2d 641 (1954).

[15] U. S. v. Smyth, supra; People ex rel. Rusch v. Levin, 305 Ill. App. 142, 26 N. E. 2d 895, 898 (1939), and see 4 Blackstone's Commentaries 283, declaring as one type of contempt, "Those committed by sheriffs, bailiffs, gaolers, and other officers of the Court.

it is contempt to communicate with or to attempt to influence a grand jury. **People v. Parker**, 397 Ill. 305, 74 N. E. 2d 528 (1947), aff'd, 334 U. S. 816, 92 L. Ed. 1747 (1948), noted, 39 Jour. Cr. L. 72 (1948); **People v. Parker**, 374 Ill. 524, 30 N. E. 2d 11 (1940); **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, cert. den. 320 U. S. 762 (1943); **Hitzelberger v. State**, 173 Md. 435, 196 A. 288, 291 (1938); **People v. Severinghaus**, 313 Ill. 456, 145 N. E. 220 (1924); **12 Am. Jur. 403**, Sec. 21, and see 38 Jour. Cr. L. 43 (1947). As stated in **Dukes v. United States**, 90 F. 2d 840, 842 (C. A. 4th 1937), in upholding punishment by contempt against a private citizen under what is now 18 U. S. C. A. 1504, it was said:

> "And one who knowingly sends a letter to a grand jury which shows upon its face the intention that it shall be considered with respect to a pending case, cannot be heard to say that he did not attempt to influence the grand jury thereby, as the attempt to influence is inherent in the act of knowingly sending such a letter."

Of course in the present case, petitioner's conviction as to the letter was reversed below, but since he obviously knew that his statements would be read by the grand jury, the principle applies equally here.

The trial judge here had an unqualified right to charge the grand jury.[16]

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by abusing the process of the law, or deceiving the parties, by any acts of oppression, extortion, collusive behavior or culpable neglect of duty."

[16] See U. S. v. Smyth, where it was said: "He may give instructions which do not constitute precedents and which cannot be controlled or corrected by appellate courts. These may be political manifestos. They may be entirely erroneous. These may include cautions and admonitions to fit local conditions and guard against dangers which the judge believes exist at the moment." (pp. 202-3).

Even should it be assumed that the charge as given was wrong, petitioner can be adjudged in contempt for violating it. **United States v. United Mine Workers**, 330 U. S. 258, 294, 91 L. Ed. 884 (1947). Nor is truth a defense to a charge of the instant type. **Patterson v. Colorado**, 205 U. S. 454, 462, 51 L. Ed. 879 (1907).[17]

Aside from the foregoing, however, it is clear that the grand jury charge given here was entirely proper. The Georgia Code, Sec. 34-9907, differing little from 18 U. S. C. 597,[18] unquestionably authorized it.

The evil sought to be proscribed by this statute is not one of recent or infrequent vintage to the state of Georgia.[19] A leading scholar on the subject, now a professor of political science at Emory University, has well-stated the situation:

> "Vote selling and vote buying is found in elections in the State, and since 1929, this evil has increased in certain counties. Very few counties are free from

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[17] In this case, it was held: "In the next place, the rule applied to criminal libels applies yet more clearly to contempts. A publication likely to reach the eyes of a jury, declaring a witness in a pending cause a perjurer, would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not to be reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print" (p. 462).

[18] See Appendix.

[19] As early as 1896, Fulton County prohibited use of hired workers and hired carriages at primary elections. See the Atlanta Constitution, March 19, 1896. In his annual message to the Georgia General Assembly on October 24, 1900, Governor A. D. Candler deplored the evils of exploitation of Negro citizens by vote buyers, and called for additional legislation. See Ga. House Jour. 1900, p. 10.

this corrupt practice. William D. Upshaw in an election in old Campbell County accused the friends of his opponent of spending a large sum of money for votes in 1926. In the same county in 1928, a friend of one of the candidates stood near the polls with his pocketbook offering to buy votes. Not being successful, he went into one of the rural precincts to buy votes. A leading politician in Lee County in 1932, spent more than $100 buying votes for a friend who was a candidate for a county office. The price paid for votes varies in different counties of the State, and is often regulated by the interest manifested in an election. In 1932, votes sold for fifty cents in Terrell County, one dollar in Fulton, and five dollars in Lee County, while whiskey was exchanged for votes in Dougherty and Baker Counties. The average price is usually a dollar."[20]

More recently, within the past month, a Negro candidate for public office in Atlanta accused the Negro Voters League of receiving "a pocketful of money" for their endorsement of an opposing white candidate.[21]

Under our theory of government, the grand jury was entitled to consider the charge given it free from outside interference from **any** source, *a fortiori*, from court officers rendering pronouncements from the same building in which the jury was deliberating. The effect upon their minds was undoubtedly magnified by virtue of petitioner's peculiar, official position. Under Georgia law, sheriffs are required to "execute and return the processes and orders

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[20] Lynwood M. Holland, The Conduct of Elections in Georgia (1937), a Thesis submitted to Emory University, on file in the State Library.

[21] See the Atlanta Journal, September 12, 1961, p. 2.

of the courts" and "to attend by themselves or deputies, upon all sessions of the superior court."[22] It is a matter of common knowledge in Georgia that sheriffs attend upon grand juries, executing their subpoenas and other processes, assist in their investigations, and in general render such assistance to the court and grand juries as may be required.

Here, petitioner's remarks were actually read by the grand jury during the very time that it was considering the matter (R. 112). The statements were all released from the same court house in which the jury was deliberating, which is tantamount to "the presence of the court,"[23] aside from the fact that this Court's decision in **Nye v. United States**, 313 U. S. 33, 85 L. Ed. 1172 (1941), interpreting the "so near thereto" clause of 18 U. S. C. A. 401 as having a geographical connotation rather than a causal one, was merely a matter of statutory rather than constitutional interpretation.[24]

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[22] Ga. Code Ann., Sec. 24-2813, Appendix.

[23] Re Savin, 131 U. S. 267, 272, 33 L. Ed. 150 (1889), declaring that, "We are of opinion that, within the meaning of the statute, the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors and witnesses; and misbehavior anywhere in such place is misbehavior in the presence of the Court." See also, in accord, In re Chaifetz, 68 A. 2d 228 (D. C. Mun. Ct. of App. 1949); People v. Hagopian, 408 Ill. 618, 97 N. E. 2d 782 (1951); People v. Parker, 328 Ill. App. 46, 65 N. E. 2d 457 (1946), aff'd 333 U. S. 571; In re Caruba, 139 N. J. Eq. 404, 51 A. 2d 446, aff'd 55 A. 2d 289 (1947); In re Attachment for Contempt of Mack, 37 West. 127, 17 Som. 221; State v. Goff, 228 S. C. 17, 88 S. E. 2d 788 (1955).

[24] 30 Geo. L. J. 406, 408 (1942). In Atlanta Newspapers, Inc. v. State, 101 Ga. App. 105, 111, 113 S. E. 2d 148 (1960), the Court of Appeals of Georgia construed the "so near thereto" language of Ga. Code, Sec. 24-105 in accordance with this Court's interpretation of similar language in the Nye case, but in a later appearance of the case before the Georgia Supreme Court, the latter court in effect disapproved this interpretation. Atlanta Newspapers, Inc. v.

Obviously, the "clear and present danger" test operates differently upon a state official issuing press releases from the same building in which the grand jury is deliberating than it does upon a private citizen completely divorced from the Court. Nor does respondent perceive that the "substantial evil" and "high" degree of "imminence" established by **Bridges**[25] require a showing that immediately upon publication, the grand jury broke into open riot. The effect of such interference as involved here is almost incapable of precise measurement.[26] Nor does respondent construe the decisions of this court as requiring a psychoanalysis of each juror to determine the degree of influence exerted upon him. Suffice it to say that a fact-finding body of laymen was deliberating a matter. Petitioner, one of the officers charged with assisting them, undertook to interfere with and influence their actions contrary to the charge given them by the court—a charge which on its face was in accordance with state as well as federal law. In essence, there is no difference in principle than if petitioner had interrupted the judge during his charge in a jury trial, and undertook to take issue therewith. Petitioner's constitutional rights of freedom of speech do not extend to empowering him to take over a court of law and supplant the trial judge.

State, 216 Ga. 309, 116 S. E. 2d 580 (1960). See 14 Vand. L. R. 1013 (1961). Moreover, in Green v. United States, 356 U. S. 165, 2 L. Ed. 2d 672 (1958), this court seems to have revived in the federal system the idea of the inherent contempt power.

[25] 314 U. S. at 262-263.

[26] Cf. Craig v. Harney, supra (331 U. S. at 392).

CONCLUSION.

The writ should be denied.

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APPENDIX.

GEORGIA CONSTITUTIONAL AND STATUTORY PROVISIONS.

1. Georgia constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann. Sec. 2-120). **Contempts.** The power of the courts to punish for contempt shall be limited by legislative acts.

2. Georgia Code Ann., Sec. 34-9907. **Buying or selling votes, and voting illegally; competency of witnesses.**—If any person shall:

1. Buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof; or

(Cobb, 819. Acts 1880-1, p. 129; 1906, p. 46.)

2. If any person shall vote at any such election who has not resided in this state one year next preceding such election; or

(Acts 1878-9, p. 157.)

3. Who has not resided six months next preceding said election in the county in which he has voted; or

(Acts 1878-9, p. 157.)

4. (Repealed.)

5. Who has been convicted in any court of competent jurisdiction of treason against the state, of embezzlement of public funds, malpractice in office, bribery, or larceny, or any crime involving moral turpitude punishable by the laws of this State with imprisonment in the penitentiary, unless he shall have been pardoned,

(Acts 1878-9, p. 157.)

He shall be guilty of a misdemeanor.

On the trial of any person for offending against this section, any other person who may have participated in any violation of the provisions of the same shall be a competent witness and be compelled to give evidence; and nothing then said by such witness shall, at any time, be received or given in evidence against him in any prosecution, except on an indictment for perjury in any matter to which he may have testified. All the provisions of this section shall be applicable, so far as the same may be, to all primary elections. **The hiring of workers qualified to vote in said election or primary before or on the day of election, for the purpose of canvassing for or influencing votes in behalf of any candidate, or the being hired for said purpose, shall be a misdemeanor** (Acts 1906, p. 46).

3. Section 34-1907.1 (Supp.) **Printing, having, or possessing ballot or likeness thereof.**—No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting (Acts 1949, pp. 1291, 1293).

Section 24-104. **Powers of Courts enumerated.** Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

3. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding therein.

4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

* * * * * * *

5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary in the exercise of its powers and duties.

4. Section 24-105. **Powers of Courts to punish for contempt.** The powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of said courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said courts:

1. Provided, that in no case shall any person be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of law or any other court of this State, when he denies that the money ordered or decreed to be paid over is in his power, custody, or control, until he has a trial by jury as herein provided.

2. The allegation of the plaintiff, receiver, referee, or any other person or persons that the defendant has a certain sum of money within his power, custody, or control, which he is withholding or refuses or fails to pay over, and the denial of the defendant that he has the power, custody or control of said money, shall form the issue to be tried by the jury, and the jury shall pass upon the fact.

3. The judge presiding shall cause questions to be propounded in writing to the jury, and every question propounded shall be answered by the jury in their verdict; and upon the answers made the judge shall adjudge or decree whether the defendant be or not in contempt, with the right to either party to move for a new trial and carry the case to the Supreme Court by bill of exceptions as in other civil cases.

4. The issue being made, a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to procure the attendance of defendant to appear and answer the final judgment or decree in the case, which shall be approved by the judge, and on failure to appear the bond shall be forfeited as in criminal cases, and in default of bond the defendant may be committed to jail for safekeeping until trial. (Acts 1892, p. 65.)

5. Section 24-2813. **Duties of Sheriffs.** It is the duty of the sheriff—(Act 1799, Cobb, 574, Act 1810, Cobb, 577, Act 1818, Cobb, 858. Act 1820, Cobb, 480, Act 1823, Cobb, 512. Acts 1853-4, p. 28.)

1. To execute and return the processes and orders of the courts, and of officers of competent authority, if not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

2. To attend, by themselves, or deputies, upon all sessions of the superior court of the county, and the court of ordinary whenever required by the ordinary, and never to leave said courts while in session without the presence of one or both of said officers, if required, and to attend in like manner at the place of holding

an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under-officers present, as police to preserve order.

* * * * * * *

6. Section 24-2814. **Defaulting sheriffs or deputies; contempt of court; Removal.**—If any sheriff or deputy fails to comply with the provisions of section 24-2813, he shall be fined for a contempt, as the clerk of the superior court is in similar cases. Section 24-2724, as to removal, shall also apply to sheriffs.

7. Section 59-304. **Duties of Grand Jury.** Grand jurors are bound only to notice or make presentments of such offenses as may or shall come to their knowledge or observation after they shall have been sworn; nevertheless they have the right and power, and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations. (Cobb, 553.)

FEDERAL STATUTORY PROVISIONS.

8. Section 18, U. S. C. 401—**Contempt.**

"A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

9. Section 18, U. S. C. 1504. **Influencing grand or petit jurors.**

Whoever attempts to influence the action or decision of any grand or petit jurors of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than $1,000.00, or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

10. Section 18, U. S. C. 597. **Influencing Voters.**

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote.

Shall be fined not more than $1,000.00 or imprisoned not more than one year or both; and if the violation was wilful, shall be fined not more than $10,000, or imprisoned not more than two years, or both."

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No. 369

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

JAMES I. WOOD, *Petitioner*

v.

STATE OF GEORGIA, *Respondent*

On Writ of Certiorari to the Court of Appeals of Georgia

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

I. OPINION BELOW

The opinion of the Court of Appeals of Georgia (R. 50-74) is reported at 103 Ga. App. 305, 119 S.E. 2nd 261.

II. JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on February 23, 1961 (R. 74-75) and rehearing was denied on March 10, 1961 (R. 75).

The Supreme Court of Georgia denied certiorari on May 22, 1961 (R. 75) and denied reconsideration thereof on June 8, 1961 (R. 78).

On August 30, 1961 petition for writ of certiorari was filed in the Supreme Court of the United States and certiorari was granted November 6, 1961 (R. 79).

The jurisdiction of this court rests on 28 U.S.C. 1257 (3), because in this case petitioner specially set up and claimed rights, privileges, and immunities under the Constitution of the United States.

III. QUESTIONS PRESENTED

In view of the freedom of speech and press, and the right to due process, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States:

1. May conduct that has a tendency to obstruct a grand jury, but does not in fact do so, be punished as a contempt of court?

2. May truthful statements critical of a court be punished as contempt of the court?

3. If a county judge uses the form of a special charge to a grand jury to make an inflammatory, prejudicial, and derogatory attack on Negro voters in all news media, may a county sheriff be imprisoned for contempt because of his public criticism of the judge's act?

4. May state courts apply the doctrine of "scandalizing the court" to hold in contempt one who publishes criticism of a state court's act?

IV. CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the Constitution of the United States provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V. STATEMENT OF CASE

In the midst of a local political campaign (R. 38), on June 6, 1960, a state court judge made a "special charge" to a county grand jury. This "charge" was delivered before reporters for all local news media and all news media had been notified to have reporters present in the court room at that time (R. 40). The judge stated that 80 to 85 per cent of Negroes were "bloc voting", that colored voters did not do their own "thinking and evaluating", that money spent for newspaper advertisements, radio announcements, etc., in solicitation of "the Negro vote" actually amounted to a purchase of such votes, and that the election laws of the State were being violated. The "charge" as a whole clearly implied that any public official who received "a Negro Bloc vote" did so through "unfair, corrupt or unlawful practices" (R. 6-12).

The next day the sheriff of the county, petitioner herein, gave to local news media a news release which criticized the judge's action and warned that such

action threatened political intimidation and persecution of Negro voters in the county under the guise of law enforcement (R. 12-13).

One month later petitioner was cited for contempt of court because he had issued the news release (R. 4-13).

The following day, July 7, 1960, petitioner released a public statement saying that his defense would be that he had spoken the truth, that he had a right to speak the truth, and reiterated the truth of what he had previously stated (R. 19-20).

The proceedings for contempt was amended to charge that this last public statement of the petitioner was an additional count of contempt of court (R. 14-20).

The contempt proceedings were later further amended to charge that petitioner's statements were each "in and of itself" a contempt of court (R. 42-44).

On hearing before the trial judge, no evidence whatsoever was introduced to show that the publications of petitioner resulted in any actual interference or obstruction of the court or grand jury. A short statement of a few circumstances existing at the time the statements were published is contained in a stipulation of facts entered in the case (R. 45-46).

The gravamen of the contempt citation as twice amended, and the gravamen of the state's case against petitioner, was that the simple publishing of petitioner's news release and defense statement, in and of itself was a contempt of court and in and of itself was clear and present danger to the administration of justice (R. 43-44).

In the court of first instance, petitioner, by general demurrers to the contempt citation, did specially set up and claimed his rights, privileges, and immunities under the Constitution of the United States and set forth verbatim the provisions of the First Amendment thereof guaranteeing his freedom of speech and the provisions of the Fourteenth Amendment thereof guaranteeing his constitutional rights against state action (R. 23-27, 31-34). Also in the written response of petitioner to citation, petitioner again plead and specially set up and claimed "the liberty of speech guaranteed to him by the Fourteenth Amendment . . . and as provided in the First Amendment to the Constitution of the United States . . ." (R. 39-40).

The trial judge overruled all of petitioner's demurrers (R. 44-45) and on the facts and pleadings adjudicated that petitioner was in contempt of court on each of the counts of the citation as amended, and ordered petitioner to prison (R. 48-50).

The case went to the Court of Appeals of Georgia on writ of error, in which appellate court petitioner by Bill of Exceptions assigned error on the judgment overruling his demurrers and on the judgment adjudicating him in contempt of court (R. 1-2).

The Court of Appeals of Georgia affirmed the judgment of the lower court as to Count 1 (petitioner's news release) and as to Count 3 (petitioner's defense statement), but reversed the judgment of the lower court as to Count 2 of the contempt citation (involving an "open letter" published by petitioner). (R. 74-75).[1]

[1] The original proceedings contained a "Count 2" which made almost identical contempt charges against an "open letter" (R. 17). Petitioner did not seek review on certiorari of the judgment of the lower court reversing his conviction on Count 2, and the respondent filed no request for review.

The Supreme Court of Georgia denied certiorari (R. 75) and denied reconsideration thereof on June 8, 1961 (R. 78).

On August 30, 1961 petition for writ of certiorari was filed in the Supreme Court of the United States and certiorari was granted November 6, 1961 (R. 79).

VI. SUMMARY OF ARGUMENT

(1) In the case now before the court, the fundamental issue is between the reasoning of the doctrine of "scandalizing the court" and the principle of the right to speak the truth.

The Court of Appeals of Georgia reasons that a judge can not be accused of wrongdoing because a judge represents the institution of judgeship and the welfare of society demands that freedom of speech, or publication of the truth, must be subordinated to respect for the *sanctity* of court. A judge should not be "dragged in the mire" with freedom of speech about actual wrongdoing by the judge, since such causes disrespect for the high office which the judge seeks to personify (R. 63, 64).

These contentions are in full accord with the doctrine of "scandalizing the court", but are directly contrary to the rights of citizens of this country under the First and Fourteenth Amendments as held in the decisions of the Supreme Court of the United States in the cases of *Bridges* v. *California*, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941); *Pennekamp* v. *Florida*, 328 U.S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946); *Craig* v. *Harney*, 331 U.S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947); and *Cammer* v. *United States*, 350 U.S. 399, 76 S. Ct. 456, 100 L. Ed. 474 (1956).

(2) This case also presents the rare incident of a county judge using the form of a special charge to a grand jury to make an inflammatory, prejudicial, and derogatory attack in all news media on the voters of a minority race group (R. 6-12).

When the power of contempt is used to silence any opposition or criticism of the judge's act, there is raised not only the question of a citizen's right to speak the truth, but also the question of whether the judge's action is in fact a judicial act or is a gross abuse of judicial prerogative which should not form a base to support contempt proceedings.

This issue has never been determined by the Supreme Court of the United States. As a matter of principle it is urged that punishment by contempt, or otherwise, should not flow from a charge which is manifestly an abuse of judicial prerogative. *Clair* v. *Nebraska*, 40 Neb. 534, 59 N. W. 118, 28 L.R.A. 367 (1894); *Blau* v. *State*, 82 Miss. 514, 34 S. 153 (1903); *State* v. *Nunez*, 147 La. 394, 85 S. 52 (1920).

VII. ARGUMENT

(1) The Right to Speak the Truth

In this case, petitioner sought to speak the truth concerning a judge's act, and sought to warn the public of the consequences which would actually result from the judge's action.

The power of contempt was used to prevent any contention or proof, of the truth of petitioner's publications, either in public news media or in a hearing on contempt charges. The Court below held that the truth or falsity of the statements concerning the judge were irrelevant to the question of contempt (R. 67), and that

while a corrupt or incompetent judge might be subject to impeachment or defeat at the polls, he was not subject to criticism, even if the statements were truthful (R. 63). Thus the Court below said (at R. 63) as the principle basis of its decision:

> "The structure of our government demands that freedom of speech be subordinated to the welfare of society in the respect for the integrity and sanctity of our courts . . . If a judge is corrupt or incompetent, there may be a remedy by suit, prosecution, impeachment, or at the polls. The public policy of democracy is that the judiciary shall not be dragged in the mire because of a real or a supposed wrong."

How one goes about impeaching or defeating a judge at the polls without criticizing him is not explained.

The record clearly shows that two things happened when the accused stated publicly that truth would be his defense to the contempt charge.

First, the contempt proceedings were amended to charge that even a statement contending publicly that he spoke the truth was a contempt of court (R. 15-20). As a result of which the accused and his witnesses dare not, under certainty of conviction for direct contempt, appear in the actual presence of the judge to plead or prove the truth of petitioner's statements.

Secondly, the contempt proceedings were amended to charge that petitioner's statements were each "in and of itself" a contempt of court (R. 42-44). Thus truth became irrelevant. Truth became no defense. The sole question to be determined by the criticized judge was the admitted authorship of petitioner's publications.

The Court of Appeals of Georgia in its opinion in this case agreed that truth is irrevelant (R. 51, 67) apparently by a conclusive legal presumption that petitioner's statements were "an attempt to obstruct or impair the administration of justice" (R. 51, 65).

However, at the contempt hearing, no evidence whatsoever was introduced to show that the publications of petitioner resulted in any actual interference or obstruction of the court or grand jury in any manner. No proof of actual resulting danger to the court or grand jury was necessary under the opinion of the lower court in this case and no defense was possible. This was in direct opposition to the holdings of this Court on the constitutional right of free speech and freedom of the press *vis a vis* contempt of court. In *Pennekamp* v. *Florida*, 328 U.S. 331, this Court said (at p. 347) that the principle of freedom of comment should weigh heavily against a possible tendency to influence cases, and (at p. 348) that criticism of judges concerning cases pending on trial was not likely to affect the administration of justice. At the time of the criticism involved here, no case was pending on trial, and certainly no case before a jury.

And in *Bridges* v. *California*, 314 U.S. 252, this Court held that an "inherent tendency" or a "reasonable tendency" of a statement to impede the administration of justice was not such a "clear and present danger" to the administration of justice as to warrant a curtailment of the rights of freedom of speech or freedom of the press. At p. 273. And in *Pennekamp* v. *Florida* this Court held that the clear and present danger to judicial administration must be shown by solid evidence. At p. 347. And in the *Bridges* case this Court held that to establish a clear and present

danger the prosecution must show at least that the evil result is likely, would be extremely serious, and the degree of its imminence extremely high. At p. 263. Yet in this case the Court below held whether or not the conduct interfered with the administration of justice was irrelevant (R. 64, 67), that if it had a tendency to obstruct the grand jury that would be enough to constitute contempt (R. 63), and that criticism of a judge which "could have had the effect" of interfering with or diverting the grand jury may properly be found to constitute contempt (R. 51). Thus in flat contradiction of this Court, the Court below held that statements critical of a judge, even if true, that possibly ("could have had the effect") could divert the grand jury, in and of itself constituted contempt, or in effect, that the mere possibility of a statement diverting a grand jury in and of itself was a sufficiently clear and present danger to warrant curtailment of the rights of freedom of speech and freedom of the press. This cannot be reconciled with *Bridges* v. *California*.

The Court of Appeals of Georgia, in unequivocal terms, gives as the basis for its opinion, that a judge can not be accused of wrongdoing because a judge represents the institution of judgeship and the welfare of society demands that freedom of speech, or publication of the truth, must be subordinated to respect for the sanctity of court. A judge should not be "dragged in the mire" with freedom of speech about actual wrongdoing by the judge, since such causes disrespect for the high office which the judge seeks to personify (R. 63, 64). Of course the same result of judicial immunity from criticism is reached if a court may declare the contents of a newspaper article,

from its language alone, to be "sufficient to amount to an obstruction of the administration of justice" (R. 71).

In affirming the contempt charge for the involved publications, the Court of Appeals of Georgia applied the subjective tests of "tendency" (R. 50) and a "could have had the effect of" possibility test (R. 51). Likewise, in effect as a conclusion of law, the lower court holds that petitioner's statements, from their language alone, were "an attempt to obstruct" (R. 51) and that petitioner "endeavors to interfere" (R. 50, 65).

The objective test of "clear and present danger" established by the Supreme Court of the United States in *Bridges* v. *California*, 314 U.S. 252, should not be circumvented on the grounds that the inherent power of state constitutional courts to define and punish for contempt means "the question of whether the conduct complained of interfered with the administration of justice in a pending case is not involved" (R. 64).

The freedom of speech and press provisions of the First Amendment to the Constitution of the United States prohibits to courts of this country the power of King's courts to lay by the heels one who scandalizes the court in publications outside the presence of the court. *Bridges* v. *California*, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941); *Pennekamp* v. *Florida*, 328 U.S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946); *Craig* v. *Harney*, 331 U.S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947); *Cammer* v. *United States*, 350 U.S. 399, 76 S. Ct. 456; 100 L. Ed. 474 (1956).

And the Fourteenth Amendment to the Constitution of the United States prohibits state action which

denies constitutional rights of citizens of the United States. *Gosjean* v. *American Press Co.*, 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936); *Hague* v. *C.I.O.*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1432 (1939); *Schneider* v. *State*, 308 U.S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939); *Kingsley International Pictures Corp.* v. *Regents of University of N. Y.*, 360 U.S. 684, 79 S. Ct. 1362, 3 L. Ed. 2nd 1512 (1959).

Not truly germane to the questions for review is the facts that petitioner as sheriff of the county was by law an officer of court. The only relevant evidence in this case, petitioner's sworn testimony in his response, is uncontradicted and undisputed on the point that the publications were not a part of any official capacity or transaction as an officer of court (R. 38). But the Court below held that the fact that petitioner happened to be an official was relevant to whether his statements constituted contempt (R. 69, 70).

The decisions of this court would indicate that a citizen of the United States does not lose his constitutional rights of freedom of speech and press simply because at some times and for some purposes he serves as an officer of a court, particularly where the statements made were not a part of any transaction or service as a court officer. *Cammer* v. *United States*, 350 U.S. 399; In re *Harriett Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2nd 1473 (1959).

In the case now before the court, the fundamental issue is between the reasoning of the doctrine of "scandalizing the court" and the principle of the right to speak the truth.

If the judiciary can not be criticized, if truth of publications is irrelevant, if reality is to be ignored

and publications are to be judged for contempt on the basis of their language alone, then the citizens of our country will have lost a significant portion of that freedom of speech which so distinguishes our constitutional government from nations where their subjects dare not criticize authority.

(2) An Inflammatory and Prejudicial Charge as the Basis for Contempt Proceedings

There is a scarcity of recorded cases dealing with an inflammatory and prejudicial charge to a grand jury. This is both a tribute to the American judiciary and is perhaps also an indication of the obvious impropriety of such an act.

In the opinion of the Court of Appeals of Georgia the "special charge" involved in this case showed that the judges of the trial court "proceeded within the ideals and the letter of the law" (R. 70). With all due respect to the lower courts, argument to the contrary must be presented.

A community can be inflamed by racial rumors and accusations. The menace and degradation of a minority race group can be contended. The specter of an evil and corrupt "negro bloc vote" can be raised.

But should such activities be classed as a judicial act because done in the form of a special charge to a grand jury? The respectability of judicial pronouncement and recital vastly increases the drastic effect and unfortunate consequences of such an act.

Couple a claim of unlimited power to use the charge prerogative with a claim of unlimited power to define contempt for public criticism, and any judge, even one who might be devoted to racism, has an unlimited

control and censorship over the public opinion in a community.

Legal contention that a judge has unlimited power to use, or abuse, the prerogative of charging a grand jury would appear to be without a foundation in reason or necessity.

As a matter of principle it is urged that punishment by contempt, or otherwise, should not flow from a charge which is manifestly an abuse of judicial prerogative. *Clair* v. *Nebraska*, 40 Neb. 534, 59 N.W. 118, 28 L.R.A. 367 (1894); *Blau* v. *State*, 82 Miss. 514, 34 S. 153 (1903); *State* v. *Nunez*, 147 La. 394, 85 S. 52 (1920).

VIII. CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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Office Supreme Court U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 369.

JAMES I. WOOD,
Petitioner,

vs.

THE STATE OF GEORGIA,
Respondent.

On Writ of Certiorari to the Court of Appeals of Georgia.

BRIEF FOR RESPONDENT.

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People v. Severinghaus, 313 Ill. 456, 145 N. E. 220 (1924) 19

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Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 745 (1951) 23
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United States v. Providence Tribune Co., 241 Fed. 524 (D. C. R. I., 1917) 17, 20
United States v. Smyth, 104 F. Supp. 283 (D. C. Cal. 1952) 17, 19, 25
United States v. United Mine Workers, 330 U. S. 258, 294, 91 L. Ed. 884 (1947) 23, 24
Whitney v. California, 274 U. S. 357, 362, 71 L. Ed. 1095 (1927) 30
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Anderson on Sheriffs, Sec. 2 25
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Arnett, Populist Movement in Georgia, Columbia University Press (1922), pp. 183-4 21

Atlanta Constitution, March 19, 1896 21
Atlanta Journal, Sept. 12, 1961, p. 2 21
4 Blackstone's Commentaries 283 25
Coulter, The South During Reconstruction (1947), pp. 356, 357 21
Francis Bacon, "Of Judicature" (No. LVI) 18
Ga. House Journal, 1900, p. 10 21
Ga. Procedure and Practice, Sec. 23-9, p. 542 30
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Georgia Constitution of 1945, Art. I, Sec. II, Par. I.. 29
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38 Jour. Cr. L. 43 (1947) 19
Lynwood M. Holland, "The Conduct of Elections in Georgia" (1937) 21
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Notre Dame L. R. 165 (1959) 23
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 369.

JAMES I. WOOD,
Petitioner,

vs.

THE STATE OF GEORGIA,
Respondent.

On Writ of Certiorari to the Court of Appeals of Georgia.

BRIEF FOR RESPONDENT.

I.

OPINION BELOW AND JURISDICTION.

Respondent adopts by reference the paragraphs of Petitioner's brief designated "Opinion Below" and "Jurisdiction".

II.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Constitutional and statutory provisions pertinent to this case are as follows: Ga. Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann., Sec. 2-120); Ga. Code Ann., Sections 34-9907, 34-1907.1, 24-104, 24-105, 24-2813, 24-2804, 24-2814, 59-304, 18 U. S. C., Sections 401, 1504, 597. These provisions are set forth in an Appendix hereto.

III.

QUESTIONS PRESENTED.

1. Whether the Court below properly applied the clear and present danger test in petitioner's conviction for contempt when it is seen that the contemptuous statements (a) Were made from the same courthouse where the grand jury was deliberating, (b) By an officer of court whose duties as the highest law enforcement official in the county required him to attend upon and render assistance to the grand jury he was seeking to influence, (c) While the investigation was then pending, and were communicated to and read by members of the grand jury during consideration of the matters given it in charge by the court, and (d) Were calculated to interfere with and deter the jury from an investigation it was then conducting pursuant to a valid and fair charge by the court.

2. Whether petitioner properly raised in the state courts the defense of truth he is now asserting in this Court.

IV.

STATEMENT OF THE CASE.

On June 6, 1960, the beginning of the June Term of Bibb County Superior Court, one of the three judges of that Court delivered a charge to the Grand Jury just impaneled in which it was instructed to investigate charges relative to criminal violations of the voting laws. The charge pointed out that:

> "There are accusations that candidates for public office have paid large sums of money to certain leaders of the Negro in an effort to gain their favor and get the Negro vote. There are accusations that candidates and their supporters have paid, and these leaders of the Negroes have accepted, money for the purpose of influencing the Negro people to bloc vote for certain candidates. This money is supposedly accepted for expenses of newspaper advertisements, radio announcements, letters, workers, etc., in the solicitation of the Negro vote, but there is no doubt that, when the vast majority blindly follow the leaders and vote as they are told it actually amounts to a purchase of thousands of votes by the favored candidate. The candidates know this and the Negro leaders know this, therefore, these leaders and candidates are in a position to traffic and trade with thousands of votes.
>
> "There are also accusations that certain Negro leaders after having met with a candidate and endorsed his candidacy have changed and supported an opposing candidate who put up a large sum of money. This creates an unhealthy, dangerous and unlawful situation.
>
> "This sort of practice, if it is true, strikes at the very foundation of our government and will ultimately

destroy it if permitted to continue unabated. It tends to corrupt public office holders and some candidates for public office. It puts in the hands of a few people the power to corrupt and this should not be allowed. As has been said 'the only thing necessary for the triumph of evil is that good men do nothing'" (R. 7-8).

The Court then instructed the Jury with respect to the Code, Section 34-9907, relating to the buying of votes, and Section 34-1907.1 (Supp.), relating to possession of ballots or any likeness thereof. The Jury was told:

"Some questions which this Jury should have answered in your investigation of elections are: Was the Negro vote delivered in bloc to any candidate or candidates? If so, who delivered it and how was it done? What contact did the candidates or their supporters have with the Negro group or its leaders? What money was involved, if any? How was the money used? What workers were employed? What promises did the candidate make, if any, in order to obtain the bloc vote?" (R. 11.)

Lastly, the Court declared:

"Now, gentlemen, it should be emphasized, and you cautioned, that the Court has only one desire in bringing this matter to the attention of the Grand Jury and that is to insure that every person who offers as a candidate for public office in this county shall have the right to a fair and honest election on the merits of the candidate and on his platform and that he shall not be defeated or elected by unfair, corrupt or unlawful practices by any person or group of persons regardless of who they are.

"Now, gentlemen, it is your duty to develop the facts of this situation and if there is sufficient evi-

dence of unlawful acts, then all parties participating, white and colored, candidates or non-candidates, should be indicted by this Grand Jury so that the guilty parties, if there are any, may be brought to trial.

"Furthermore, it is your duty to bring to light those practices which, while not technically in violation of any law, are yet so immoral or corrupt as to be destructive of the purposes of our system of elections. It is further your right and duty to determine what additional laws, or amendments to existing laws, are needed to adequately deal with the situation with which we are faced and to recommend enactment thereof by the Legislature" (R. 11-12).

The next day, June 7, while the grand jury was considering these very matters given it in charge, petitioner, sheriff of Bibb County, released to local news media a press statement in which he accused the court of "persecution", "race agitation", a "crude attempt at judicial intimidation of Negro voters and leaders", and "political-legal action" (R. 12).

More specifically, petitioner charged that,

"Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

"It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the Negro people in this community.

"It seems incredible that all three of our Superior Court judges, who themselves hold high political office, are so politically naive (sic) as to actually believe that the Negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some Negro leaders.

> "If anyone in the community be free of racial prejudice, it should be our judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office" (R. 13).

This press release was made in the sheriff's office located in the same courthouse in which the grand jury was deliberating (R. 14), was made while the grand jury investigation was still pending (R. 5), and was read by members of that jury during their deliberations thereon (R. 45).

The very next day, June 8, petitioner also delivered to the bailiff stationed at the entrance to the grand jury room, "An Open Letter to the Bibb County Grand Jury", implying that the Judge's charge was false and declaring that it was really the Bibb County Democratic Executive Committee which was guilty of corruption in the purchasing of votes (R. 17).

Approximately one month later on July 7, the Solicitor General filed a petition for contempt charging the issuance of the "news release" while the grand jury investigation was still pending, and asserting that it was done in a course of action designed and calculated to "hamper, hinder, interfere with and obstruct the said Grand Jury and the said Court in the said investigation ordered" (R. 5).

The petition was subsequently amended to allege that the news release was issued from the Sheriff's office located in the same courthouse where the charge was given and the grand jury investigation was then in progress (R. 14); that the news release was made at the very time the jury had before it records and documents relating to elections in which petitioner had participated; that the press release was actually read by members of the jury during their investigation; and that petitioner's action

"created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury into the matters about which it had been instructed by the Court, and further presented a clear, present and imminent danger to the proper administration of justice in Bibb Superior Court" (R. 42-3).

In the meantime, the day following the filing of the original petition for Contempt, to wit, July 8, petitioner had issued another press release asserting that his defense would be "truth", and again repeating, in substance, the charges he had previously made; declared that the judges were "wrong" to cite him for contempt; and concluded by charging that the judges had stirred up "ill will and race agitation" and presented "grossly false and discrediting conclusions . . . ." (R. 19-20).

The petition for contempt was thereafter amended on July 28, so as to add two new counts, Count II charging contempt in transmitting the "Open Letter" to the grand jury[1], and Count III charging contempt in issuing the second news release (R. 15-17). As finally amended, Count III alleged that the second news release was issued from petitioner's office in the same courthouse where the grand jury was at that time investigating the matters about which it had been charged; that the investigation was then pending; that "The making and publishing of said statement amounts to an interference in a pending case and the orderly processes of the Court in respect thereto, and constitutes an effort to obstruct justice and is itself a contempt of Court" (R. 15-17); and that petitioner's action "created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury . . . ."; and that the press re-

[1] The Court of Appeals of Georgia reversed petitioner's conviction on this count, and hence it does not appear in the record, although the news release upon which it was based is found in the record at pages 19-20.

lease was actually read by members of the grand jury while it was still conducting its investigation (R. 43-4).

Petitioner filed demurrers (R. 21-37) and Response (R. 37-42). The responses admitted all allegations as to issuance of the public news releases, the fact that they were issued pending the investigation, and that they were issued in the same courthouse where the Court's charge was given and the grand jury was then sitting (R. 37, 41). The responses took issue with the petition mainly as to the purport and effect of petitioner's statements (R. 38-41). While one ground of petitioner's demurrers attacked the petition for failing to allege that the statements were false or untrue (R. 22, 30), petitioner nowhere in his responses asserted truth as a defense.

The demurrers were heard on August 5, 1960, and order overruling them was rendered on August 10 (R. 44). On that same day, counsel for the respective parties stipulated in writing that at the time petitioner issued his first press release, the grand jury was then considering voting records, and that both press releases were read by members of the grand jury while the investigation was in progress (R. 45).

The case was then adjourned until the following day when a hearing on the merits was had.

Petitioner offered no evidence to sustain any of the allegations of his response, nor undertaking to prove "truth" as a defense. Following the hearing, the trial judge rendered judgment adjudging petitioner guilty on each count, and imposing concurrent sentences of 20 days and separate fines of $200.00 on each count (R. 48).

On writ of error to the Court of Appeals, the convictions on Counts I and III were affirmed, and the conviction on Count II was reversed. **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961).

As to Count 1, the Court declared in Head Note 1:

> "(b) The grand jury is a constituent part of the court, and anyone whose conduct interferes with, or has a tendency to obstruct the grand jury, or endeavors to interfere with the performance of its duties may be found in contempt" (R. 59).

In the body of the opinion dealing with this Count, the Court several times emphasized the fact of "interference" with the grand jury (R. 61, 62), and concluded:

> "The language of the news release, the basis of Count 1 of the citation for contempt, charged the judges of the superior court with threatening political persecution under the guise of law enforcement, and further charged them with bias against a minority group, and compared the effect of the instructions to the grand jury with the attempted intimidation as used by the Ku Klux Klan against this group. It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge" (R. 65).

The late Presiding Judge Townsend, concurring as to the affirmance on Count 1, declared that the right to speak, although privileged in many instances, can not exist "when the words are directed toward the impeding of a judicial proceeding presently in progress" (R. 72). Judge Townsend further declared:

> "I agree that count 1 relating to a newspaper article written by the sheriff, a man associated in the minds of many lay people with the pronouncement as well as the enforcement of the law, accusing the judge

of instructing the grand jury to ferret out certain crimes relating to possible bribery, not in accordance with his duty to so instruct the jury, but as a cover for personal reasons aimed at stirring up race prejudice, is a contempt of the court and the grand jury, necessarily calculated to impede the administration of justice, and should be punished as such" (R. 72).

With respect to Count III, the Court stated in Head Note 3 that:

"(f) The act of the judge in charging the grand jury with its duties is a judicial act, and an improper interference therewith may be found to be contempt of court" (R. 51).

In the body of the opinion, it was said:

"When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a 'contempt" (R. 66-67).

• • •

"With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding" (R. 67).

• • •

"We do not intend by this decision to hold that the opinions, the judgments, the proceedings of the courts, or the judges themselves, are under any and all circumstances exempt from objection or remonstrative criticism. But where, as here, the three judges in-

volved acted jointly, and in their place proceeded within the ideals and the letter of the law, and where, as here, there were vitriolic attacks upon the motives, judgment, and biases of these judges, and all this carried on by the sheriff, an officer of the law and of the court, at times during which the grand jury properly had before it for consideration the charge of the court, we can only conclude that the sheriff's intemperate actions constituted contempt and the convictions on counts 1 and 3 were proper" (R. 70).

The conviction on Count II was reversed because it "failed to meet" the "clear and present danger" test established by this Court and previously followed by the Georgia Supreme Court and Court of Appeals (R. 65-6).

The Supreme Court of Georgia denied certiorari without opinion on May 22, 1961 (R. 75). A motion for reconsideration was filed in the Georgia Supreme Court from this denial which sought to raise for the first time the contention that petitioner had been denied the opportunity to present any defense against the charges (R. 77).

This Court granted certiorari on November 6, 1961 (R. 79).

V.

SUMMARY OF ARGUMENT.

1. Both the trial court and the Court of Appeals in this case applied the "clear and present danger" rule established by this Court for contempt cases in **Bridges v. California**, 314 U. S. 252 (1944), and neither court below purported to be following the common law "scandalizing the court" doctrine. Prior decisions of the Georgia courts recognized and applied the clear and present danger test, and in a case decided subsequently to the Court of Appeals' decision in this case, it was cited as being an application of that test. **Renfroe v. State**, 104 Ga. App. 362, 364 (1961).

2. The grand jury is an arm of the court, and any interference therewith, such as efforts to influence its proceedings, is punishable by contempt, where the requirements of clear and present danger are met, for it is the function of the court, and no one else, to charge the grand jury. In this respect, there is little difference between a grand and a petit jury. Cf. **Eubanks v. Louisiana**, and citations. Federal law expressly declares as a crime any effort to influence a grand jury, 18 U. S. C. A. 1504, and state authorities uniformly hold such acts to be punishable as contempt. Considering the legitimate governmental interest to be protected, the nature of the statements, the fact that they were made while the investigation was in progress and were actually communicated to the fact-finding body of laymen, the requirements of clear and present danger are satisfied. Independently of this, petitioner was an officer of court in the strictest sense, and as such, subject to disciplinary action by contempt. Ga. Code, Sec. 24-105, and cf. 18 U. S. C. A. 401.

3. The clear and present danger test does not require proof that the attempt to influence or interfere with the

grand jury was successful, for it is impossible to determine what effect such interference may have had. The test is clear and present danger of obstruction, not that the effort was successful.

4. While this Court has held that truth is no defense to a charge of criminal contempt, for "even a correct conclusion is not to be reached or helped in that way," **Patterson v. Colorado,** 205 U. S. 454 (1907), petitioner has at no time sought to prove truth as a defense, nor has he been prevented from so doing, the extent of the Court's ruling on this issue being an overruling of his demurrers which complained that the petition for contempt failed to **allege** the contemptuous statements to have been false.

VI.

ARGUMENT.

1. "Clear and Present Danger", Not "Scandalizing the Court", Was the Rule Applied Below.

Having very cleverly fabricated a straw man, petitioner's brief then proceeds to demolish it with dispatch. The argument is made that the Court of Appeals of Georgia, completely oblivious of this Court's decisions in the **Bridges, Craig** and **Pennekamp** cases, has predicated its decision in this case upon the common law "scandalizing the court" rule. A study of the record refutes this contention.

The petition for contempt as amended expressly charged a clear and present danger to the pending grand jury investigation (R. 43, 44). Throughout, emphasis was placed in the pleadings on the fact that petitioner's acts were all committed while the investigation was then in progress (R. 5, 15, 16), and that his remarks were actually communicated to the jurors while they were considering the very matter dealt with in petitioner's press releases (R. 43, 44, 45).

In the syllabus to its decision upholding the conviction on Counts I and III, the Court of Appeals placed emphasis upon the fact of "interference" (R. 51-1), as did the body of its opinion (R. 61, 62, 65). In a part of its opinion stated by the Court to be applicable to both Counts, the Court of Appeals stated:

> "With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding" (R. 67).

The Court of Appeals expressly recognized that the actions of courts are not immune from criticism at appropriate times (R. 70) as did a concurring Judge (R. 72).

Equally significant is the fact that the conviction on Count II was reversed because "Count II must stand alone to meet the test of whether it constitutes a 'clear and present danger to the administration of justice' . . . and it fails to meet this test" (R. 66). The two judges who dissented from the reversal on Count II did so not because of disagreement with the rule, but merely with its application (R. 74).

As early as 1936, the Georgia Court of Appeals rejected the "scandalizing the court" rule. See **Townsend v. State**, 54 Ga. App. 627, 631-2, 188 S. E. 560. In **McGill v. State**, 209 Ga. 500, 504, 74 S. E. 2d 78 (1953), the Supreme Court of Georgia applied the "clear and present danger" test in an opinion which declared:

> ". . . The rule at common law was broader than the rule in this State, and no doubt lawyers and judges have been led into error by considering the common law only without taking into account our constitutional guaranties of free speech and liberty of the press. Merely writing contemptuously about a judge is constructive contempt under the common law, but this rule is founded upon the theory that the judge is the representative of the king, who it is assumed can do no wrong and, hence, the acts of the judge are beyond question. Free speech and liberty of the press in our system of popular government are diametrically opposed to any theory that any public officer shall be immune to criticism and searching examination of his official conduct. The freedom of the individual might well depend upon the unshackled discussion of all matters affecting the public, especially the conduct of those who fill positions of public trust, and this includes the judges of our courts."

The test has been applied in a number of other cases. **Adams v. State**, 89 Ga. App. 882, 81 S. E. 2d 507 (1954); **Clark v. State**, 90 Ga. App. 330, 83 S. E. 2d 45 (1954); **Atlanta Newspapers, Inc. v. State**, 101 Ga. App. 105, 113 S. E. 2d 148 (1960); **Renfroe v. State**, 104 Ga. App. 362, 364, ... S. E. 2d ... (1961), citing the Wood case for the "clear and present danger" rule, and see **Atlanta Newspapers, Inc. v. Grimes**, 216 Ga. 74, 78, 114 S. E. 2d 421 (1960).

At pages 8-10 of petitioner's brief, reference is made to certain language which, it is asserted, demonstrates that the Court of Appeals below was applying the "scandalizing the court" test. But petitioner fails to point out that all of these quotes were not taken from the language of the Court of Appeals in this case, but were quotes taken either from **Cobb v. State**, 59 Ga. App. 695, 25 E. 2d 116 (1939), or **In re Fite**, 11 Ga. App. 665, 76 S. E. 397 (1912). It should particularly be pointed out that such is true of the statement,

> "... the question whether the conduct complained of interfered with the administration of justice in a pending case is not involved" (R. 64).

This quote was taken from a long statement in **Cobb v. State**, supra, quoted in the Wood case. Petitioner's brief, on the other hand, attempts to present this statement as an original, holding on the merits in this case (Brief, p. 11), which is not so, for immediately following this quote, the Court of Appeals clearly stated the basis of its holding, to wit:

> "... It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge."

2. The Court Below Properly Applied the Clear and Present Danger Test.

It is well settled that, "The grand jury is an arm of the court, and its *in camera* proceedings constitute a judicial inquiry." **Levine v. United States**, 362 U. S. 610, 4 L. Ed. 2d 989 (1960); **United States v. Smyth**, 104 F. Supp. 283 (D. C. Cal. 1952); **Gates v. State**, 73 Ga. App. 824, 38 S. E. 2d 311 (1946); **Cook v. Sikes**, 210 Ga. 722, 82 S. E. 2d 641 (1954); **In re Presentment of Ellison**, 44 F. Supp. 375 (D. C. Del. 1942), aff'd. 133 F. 2d 903 (c. c. 3rd 1943), cert. den. 318 U. S. 791. It therefore follows as "an inevitable consequence" that the court has the power and is charged with the duty of punishing for contempt any one whose conduct interferes with the grand jury. **Commonwealth v. McNary**, 246 Mass. 82, 140 N. E. 255 (1923); **United States v. Providence Tribune Co.**, 241 Fed. 524 (D. C. R. I., 1917); **Commonwealth v. Chmielinski**, 246 Mass. 55, 140 N. E. 258 (1923); **Ex Parte Shuler**, 210 Cal. 377, 292 P. 481, 493 (1930); **In re Michael**, 146 F. 2d 627 (c. c. 3rd 1944), rev'd. on other grounds, 326 U. S. 224, 90 L. Ed. 30 (1945); **In re Presentment of Ellison**, supra; **Commonwealth v. Butler**, 171 Pa. Super. 350, 90 A. 2d 838, 841 (1952).

Secondly, "Interference with the proceedings of a grand jury in the performance of its functions is as truly a contempt of court as is interference with the proceedings of a petit jury, either in the course of a trial or during its deliberation". **United States v. Providence Tribune Co.**, supra (241 Fed. at 525); **Commonwealth v. McNary**, supra; **Commonwealth v. Crans**, 2 Clark 172, 183, 3 Pa. Law J. 442, 451 (1844).[2] The Court is deemed to be

[2] In this well-reasoned case, the Court declared that:

"The grand jury being officers of the Court, and under its legal direction, are entitled to its protection from assaults of every kind, whether the effort is designed to influence them on question of law or fact, or intended to disturb them in their deliberations when assembled in court or the jury-room, or to

"present"[3] in any part of the place set aside for the transaction of its business. **Re Savin**, 131 U. S. 267, 272, 33 L. Ed. 150 (1889); **In re Chaifetz**, 68 A. 2d 228 (D. C. Mun. Ct. of App. 1949); **People v. Hagopian**, 408 Ill. 618, 97 N. E. 2d 782 (1951); **People v. Parker**, 328 Ill. App. 46, 65 N. E. 2d 457 (1946), aff'd 333 U. S. 571; **In re Caruba**, 139 N. J. Eq. 404, 51 A. 2d 446, aff'd 55 A. 2d 289 (1947); **In re Attachment for Contempt of Mack**, 37 West. 127, 17 Som. 221; **State v. Goff**, 228 S. C. 17, 88 S. E. 2d 788 (1955); **Harding v. McCullough**, 236 Iowa 556, 19 N. W. 2d 613, 617 (1945), for "The place of justice is a hallowed place, and therefore not only the bench, but the foot pace and precincts and purprise thereof, ought to be preserved without scandal and corruption", Francis Bacon, "Of Judicature" (No. LVI), quoted in **People v. Higgins**, 16 N. Y. S. 2d 302, 307, 173 Misc. 96 (1939).

It is the function of the Court to charge the grand jury, and it follows that no one else has any right to undertake to do so, **United States v. Kilpatrick**, 16 Fed. 765, 770 (D. C. N. C. 1883); **Commonwealth v. Crans**, supra, and in charging the grand jury, the trial court has a very large discretion, and he may call to its attention any unusual state affecting the welfare of the community. **Carr v.**

menace them by threats of violence for the manner in which they shall perform their duty, or to control, influence, or bias their judgment upon any question likely to come before them for deliberation. To attempt anything of the kind is criminal in the eye of the law. It is a high contempt of the Court, an obstruction of the administration of justice, and the tendency of all such acts is to corrupt the fountains of judicial tribunals, which for the safety of society should always be kept pure, and even free from suspicion."

[3] This court's interpretation of "presence of the court" as used in 18 U. S. C. A. 401, established in *Nye v. United States*, 313 U. S. 33, 85 L. Ed. 1172 (1941), was based on statutory and not constitutional grounds. See 30 Geo. L. J. 406, 408 (1942). Similar language in Ga. Code 24-105 (appendix) was construed as having a causal connotation rather than a geographical one. See *Atlanta Newspapers, Inc., v. State*, 216 Ga. 309, 116 S. E. 2d 580 (1960), noted, 14 Vand. L. R. 1013 (1961).

State, 28 Ala. App. 466, 187 So. 252 (1939); **United States v. Smyth**, 104 F. Supp. 283, 292 (D. C. Cal. 1952).

So vitally important are grand jury proceedings deemed by this court, that a conviction itself valid will be set aside where the grand jury proceedings resulting in the indictment were tainted. See **Eubanks v. Louisiana**, 356 U. S. 584, 2 L. Ed. 2d 991 (1958), and cases cited, particularly **Cassell v. Texas**, 339 U. S. 282 (1950), and in this respect, it must be recalled that "Society also has a right to a fair trial". **Fay v. New York**, 332 U. S. 261, 91 L. Ed. 2043 (1947).

Attempts to influence grand jurors are made criminal by federal law, 18 U. S. C. A. 1504, and the authorities uniformly uphold contempt convictions based upon communications with or attempts to influence a grand jury. **People v. Parker**, 397 Ill. 305, 74 N. E. 2d 528 (1947), aff'd, 334 U. S. 816, 92 L. Ed. 1747 (1948), noted, 39 Jour. Cr. L. 72 (1948); **People v. Parker**, 374 Ill. 524, 30 N. E. 2d 11 (1940); **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, cert. den. 320 U. S. 762 (1943); **Hitzelberger v. State**, 173 Md. 435, 196 A. 288, 291 (1938); **People v. Severinghaus**, 313 Ill. 456, 145 N. E. 220 (1924); **12 Am. Jur. 403**, Sec. 21, and see 38 Jour. Cr. L. 43 (1947). As stated in **Dukes v. United States**, 90 F. 2d 840, 842 (C. A. 4th 1937), in upholding punishment by contempt against a private citizen under what is now 18 U. S. C. A. 1504, it was said:

> "And one who knowingly sends a letter to a grand jury which shows upon its face the intention that it shall be considered with respect to a pending case, cannot be heard to say that he did not attempt to influence the grand jury thereby, as the attempt to influence is inherent in the act of knowingly sending such a letter."

See also **Commonwealth v. McNary**, supra.

Moreover, as stated in **United States v. Providence Tribune Co.**, 241 Fed. 524, 528:

> "It makes little difference whether information as to the grand jury is conveyed by direct statement, or by the collection and publication of circumstantial evidence of such character as to enable the public to draw a natural inference. The disclosure and its extent, and not the special mode of disclosure of what the law requires to be done in secret, is the important thing."

All of this is not to gainsay the equal importance to a free society of untrammeled speech, for the "clear and present danger" test has been held applicable to contempt of court in preference to the "reasonable tendency" test. **Bridges v. California**, 314 U. S. 252, 86 L. Ed. 192 (1944); **Craig v. Harney**, 331 U. S. 367, 91 L. Ed. 1546 (1947); **Pennekamp v. Florida**, 328 U. S. 331, 90 L. Ed. 1295 (1946). But neither is freedom of speech itself absolute. **Kingsley Books, Inc., v. Brown**, 354 U. S. 436, 441, 1 L. Ed. 2d 1469 (1957), for "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses". **American Communications Association v. Douds**, 339 U. S. 382, 399, 94 L. Ed. 925 (1950), quoting **Cox v. New Hampshire**, 312 U. S. at 574.

In each case, as stated in **Speiser v. Randall**, 357 U. S. 513, 520, 2 L. Ed. 2d 1460 (1958):

> "When we deal with the complex of strands in the web of freedoms which make up free speech, the operation and effect of the method by which speech is sought to be restrained must be subjected to close analysis and critical judgment in the light of the particular circumstances to which it is applied."

When justified by "subordinating valid governmental interests", state action limiting the unfettered exercise

of speech has been upheld in an attempt to reconcile conflicting interests. **Konigsberg v. State Bar of California**, 362 U. S. 910, 4 L. Ed. 2d 618 (1961).

Little need be said here as to the valid interest of Georgia in an impartial, unhampered administration of its criminal laws, and more particularly those which seek to preserve the sanctity of its electoral processes. See dissenting opinion of Mr. Justice Douglas in **Hannah v. Larche**, 363 U. S. 419, 4 L. Ed. 2d 1307 (1960). The Georgia statute given in charge to the grand jury here (Sec. 34-9907), little different from a federal statute, 18 U. S. C. A. 597, strikes at an evil which unfortunately has not been of academic interest only.[4]

[4] As early as 1896, Fulton County prohibited use of hired workers and hired carriages at primary elections. See the *Atlanta Constitution*, March 19, 1896. In his annual message to the Georgia General Assembly on October 24, 1900, Governor A. D. Candler deplored the evils of exploitation of Negro citizens by vote buyers, and called for additional legislation. See *Ga. House Jour. 1900*, p. 10. Within the year, one Negro candidate for public office in Atlanta has charged the Negro Voters' League of receiving money for the endorsement of an opposing candidate. See Atlanta Journal, Sept. 12, 1961, p. 2. A professor of political science at Emory University stated the situation as he found it a few years ago: "Vote selling and vote buying is found in elections in the State, and since 1929, this evil has increased in certain counties. Very few counties are free from this corrupt practice. William D. Upshaw in an election in old Campbell County accused the friends of his opponent of spending a large sum of money for votes in 1926. In the same county in 1928, a friend of one of the candidates stood near the polls with his pocketbook offering to buy votes. Not being successful, he went into one of the rural precincts to buy votes. A leading politician in Lee County in 1932, spent more than $100 buying votes for a friend who was a candidate for a county office. The price paid for votes varies in different counties of the State, and is often regulated by the interest manifested in an election. In 1932, votes sold for fifty cents in Terrell County, one dollar in Fulton, and five dollars in Lee County, while whiskey was exchanged for votes in Dougherty and Baker Counties. The average price is usually a dollar." Lynwood-M. Holland, "The Conduct of Elections in Georgia" (1937), a thesis submitted to Emory University. See also Arnett, Populist Movement in Georgia, Columbia University Press (1922), pp. 183-4; Coulter, The South During Reconstruction (1947), pp. 350, 357.

If the grand jury investigation here had terminated, no one would contest the legal right of petitioner to speak his piece, whatever one might think of it from the standpoint of good taste. But here the statements were issued at the very time the grand jury was conducting its investigation and had before it voting records and tabulations (R. 42-4). By their very terms, petitioner's articles were calculated to reach the jury while it was deliberating (R. 12, 17, 19), and it appears that in fact they did (R. 45). Even if it be assumed that petitioner's activities were under consideration, it follows that he had no right to communicate his contentions "because of the disruptive influence their injection would have on the proceedings . . . ." **Hannah v. Larche**, supra.

The **Bridges, Craig, and Pennekamp** cases do not require a reversal here.

The manifest difference is that whereas all those cases involved either statements calculated **merely to influence the judge**[5] or else comments on judicial action **already taken**,[6] the present case concerns language uttered by a public officer in the court house calculated to influence the grand jury in an investigation which it was at the very moment considering. While a judge is "expected to be a man of ordinary firmness and character",[7] there is no such presumption as to jurors.[8] There has been no case to come before this Court subsequent to the Bridges case

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[5] Bridges v. California; Craig v. Harney.

[6] Pennekamp v. Florida (328 U. S. at 348). See 41 Ill. L. R. 696 (1947).

[7] Justice Holmes in Toledo Newspaper Co. v. United States, 247 U. S. 402, 424, 62 L. Ed. 1186 (1918).

[8] See Comments, 90 U. Pa. L. R. 617 (1942); 19 N. Y. U. L. Q. 307, 310 (1942); 45 Mich. L. R. 513 (1947); "A Re-Examination of Bridges v. California", 23 Alb. L. R. 61 (1959).

involving a jury trial,[9] unless it be **Maryland v. Baltimore Radio Show**, 338 U. S. 912, 94 L. Ed. 562 (1950), but even in that case, the trial was not in progress when the publication was made. This, of course, is not to say that the clear and present danger test does not apply to jury trials,[10] but obviously, it necessarily follows that what would constitute such a danger in a non-jury matter might well do so in a pending jury case. The complex system represented by the rules of evidence bear mute evidence to this fact.

"Clear and present danger" does not mean that "trials are like elections, to be won through the use of the meeting-hall, the radio and the newspaper",[11] and,

> "It does not follow that public comment of every character upon pending trials or legal proceedings may be as free as a similar comment after complete disposal of the litigation."[12]

Moreover,

> "When a case is finished courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."[13]

Even should it be assumed that the grand jury charge as given was wrong, petitioner can be adjudged in contempt for interference therewith. **United States v. United**

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[9] Notre Dame L. R. 165 (1950). See also concurring opinions of Justices Jackson and Frankfurter in Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 740 (1951).

[10] 23 Alb. L. R. 61 (1930).

[11] Bridges v. California, supra (314 U. S. at 271).

[12] Pennekamp v. Florida, supra (328 U. S. at 346).

[13] Patterson v. Colorado, 205 U. S. 454, 463, 51 L. Ed. 879 (1907).

Mine Workers, 330 U. S. 258, 294, 91 L. Ed. 884 (1947). "Even an erroneous ruling or order of a court that has jurisdiction to act does not justify contemptuous conduct . . ." **Harding v. McCullough**, 236 Iowa 556, 19 N. W. 2d 613, 616 (1945). But the charge here was entirely proper in every respect. The trial court simply called to the attention of the grand jury a Georgia criminal statute, and the need for its enforcement. This Court can not assume that the circumstances and conditions referred to below do not in fact exist. Political organizations are not exempt from state laws prohibiting vote-buying simply because Negro citizens are involved.

Moreover, contrary to the inference sought to be made by petitioner's brief, the charge below was not "an inflamatory, prejudicial and derogatory attack . . . on the voters of a minority race group" (Brief, p. 7). A fair reading of the charge clearly indicates that it was aimed at the candidates and political bosses who buy and sell votes, and not the voters themselves: "There are accusations that **candidates** for public office have paid large sums of money to **certain leaders of the Negro** in an effort to gain their favor and get the Negro vote" (R. 7).

The inference is also made (Brief, p. 3) that the charge implied that money spent for advertising in solicitation of the Negro vote was tantamount to a purchase of votes, but reading this portion of the charge in its context demonstrates otherwise: "This money is **supposedly** accepted for advertising . . ." (R. 7). In other words, the court was saying that the money was paid under false pretenses.

Nor did the charge imply that all bloc voting was illegal; viz.:

> "We do not mean to say to you that Negroes do not have the right to bloc vote if they wish to do so, if their self interest is a factor in their decision to support a certain candidate, instead of a consideration

simply to the person or persons controlling their votes."

"Issues, principles or policies may, under some circumstances, justify certain groups in casting similar votes but if the vote is a right it is an individual right and carries with it the duty and obligation of intelligent determination by the individual claiming the right. There is no right of a vote to be bartered, nor is there any right to a vote to be cast in bloc merely at the whim or caprice of domineering individuals or conspiratorial organizations" (R. 7).

Under the facts of this case, the evidence was sufficient to sustain a conviction under the "clear and present danger" test even as against a private individual. *A fortiori*, where as here, the accused was himself a public officer sworn to attend upon and serve the very body he was convicted of attempting to influence. A sheriff is an officer of court, subject to its orders and discipline, **United States v. Smyth**, 104 F. Supp. 283 (D. C. Cal. 1952); **People ex rel. Rusch v. Levin**, 305 Ill. App. 142, 26 N. E. 2d 895, 898 (1939), and he long has been held subject to punishment by way of contempt under circumstances where a private citizen would not, **Commonwealth ex rel. Davis v. Malbon**, 195 Va. 368, 78 S. E. 2d 683 (1953), 4 Blackstone's Commentaries 283, and in this connection, "public officers must always be in the forefront with the grand jury in rooting out evil and exposing wrong doing." **Barbuto v. Silver**, 186 N. Y. S. 2d 1018, 1023 (1959). The office of sheriff is of ancient origin, the term itself meaning "county keeper", **Anderson on Sheriffs**, Sec. 2, and as pointed out by Judge Townsend below, a sheriff is associated in the minds of many lay people with the "pronouncement as well as the enforcement of the law" (R. 72) and his acts and doings are likely to produce an exaggerated effect on the public.

Under Georgia law, "The office of sheriff carries with it . . . all of its common law duties and powers except as modified by statute . . ." and he is required to perform such duties as necessarily appertain to his office. **Elder v. Camp**, 193 Ga. 320, 18 S. E. 2d 622 (1942); **Foster v. Vickery**, 202 Ga. 55, 42 S. E. 2d 117, 120 (1947). Sheriffs are expressly required to "execute and return the processes and orders of the courts", and to attend by themselves or deputies upon all sessions of the superior court. Ga. Code, Sec. 24-2813. It is a matter of common knowledge in Georgia that sheriffs attend upon grand juries, executing their subpoenas and other processes, assist in their investigations, and in general render such assistance to the court and grand juries as may be required.

The law of Georgia specifically provides for contempt proceedings against its officers, Secs. 24-104, 24-105, as does federal law, 18 U. S. C. A., 401 (See Appendix). The **Cammer** and **Sawyer** cases, cited at page 12 of petitioner's brief have no application, as those cases do not deal with one who is strictly speaking, an officer of court, as so held in the **Cammer** case. Since the character of the person making a particular communication has a direct relevance to the effect that such communication is likely to produce, this clearly is one circumstance pertinent to the question of contempt, as held below (R. 69).

Stated differently, the "clear and present danger" test operates differently upon a state official issuing press releases from the same building in which the grand jury is deliberating than it does upon a private citizen completely divorced from the Court.

3. Proof That the Interference Was Successful Is Not Necessary.

While petitioner's demurrers and responses filed in the trial court below recognized that contempt could be estab-

lished either from proof of actual obstruction or circumstances indicating a clear and present danger thereof (R. 22, 24, 30, 32, 39), the Brief filed in this court now takes the bold position that actual obstruction must be proven. The court below held to the contrary (R. 51), and this holding is unquestionably correct, for it is well settled that "The success or failure of an attempt to influence the jury is not the test, since no one can know what, if any, effect it had." **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, 989 (1943), cert. den. 320 U. S. 762 (1943); **State v. McAllister**, 43 N. M. 514, 96 P. 2d 1, 3 (1939); **Ex Parte Shuler**, 210 Cal. 377, 292 P. 481, 493 (1930); **State ex rel. Giblen v. Sullivan**, 157 Fla. 496, 26 So. 2d 509, 516 (1946); **People v. Gholson**, 344 Ill. App. 199, 100 N. E. 2d 343 (1951), rev'd on other grounds 106 N. E. 2d 333, 412 Ill. App. 294 (1952); **Summers v. State**, 66 Ga. App. 648, 19 S. E. 2d 28 (1942); **Sinclair v. United States**, 279 U. S. 749, 762, 73 L. Ed. 938 (1929); **12 Am. Jur. 417**, Sec. 37, and see Mr. Justice Frankfurter's remarks in the **Bridges** case (314 U. S. at 291-2). The test is not actual obstruction, but whether "the words used are used in such circumstances and are of such a nature as to create a clear and present danger" that they will result in an obstruction of justice. **Bridges v. California**, 314 U. S. at 261. "Inherent tendency" and "reasonable tendency" are not enough (Id., p. 273), but "the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished" (p. 263).

Nowhere in the **Bridges**, **Pennekamp** or **Craig** cases did this Court intimate that actual obstruction must be proven, nor that an observable effect be shown to have ensued as a logical consequence of the comments. As stated in the **Bridges** case:

> "We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil

of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment." (314 U. S. 271.)

Following this statement, the court reviewed the wording of the publications and noting that the editorials were published after trial and pending sentencing by the Court, whereas the Bridges telegram was published after trial when all that was pending was a motion for new trial, the Court concluded that the likelihood of these matters affecting a judge was too remote. With respect to the editorials the judge was already aware of the long-standing position of the defendant newspaper on labor disputes, and as to Bridges, the Court also must have realized independently of the telegram that a decision adverse to the Union might result in a strike.

The same approach was used in the **Pennekamp** and **Craig** cases.

To say that actual obstruction must be shown would destroy the contempt power altogether, for how would it be possible to prove it? Would such a test require a showing that immediately upon publication the grand jury rebelled and took up arms against the judge, assigning as their reason for so doing the statements of petitioner? Would it require calling each juror to testify and exploring his mental processes, as against the rule that such matters are generally privileged? See Code Sec. 59-303; **Cook v. Sikes**, 210 Ga. 722, 727, 82 S. E. 2d 641 (1954).

The test is clear and present danger, not successful obstruction.

4. Petitioner Offered No Defense of "Truth" Below.

While petitioner's demurrers asserted as one ground the failure of the petition for contempt to allege that petitioner's statements were "false or untrue" (R. 22, 30),

the response filed by petitioner failed to mention "truth" as a defense (R. 37).

Nor did petitioner at the hearing offer any proof, as to truth or anything else. The parties stipulated certain facts in writing (R. 45), and the Court permitted petitioner to file his sworn response as evidence of all the "legally admissible statements of fact contained therein" (R. 47).

Petitioner's brief now makes the remarkable claim that no evidence of truth was adduced because of the Court's having allowed amendments to the petition which rendered truth no defense, and petitioner and his witnesses "dare not, under certainty of conviction for direct contempt, appear in the actual presence of the judge to plead or prove the truth of petitioner's statements" (Brief, p. 8). There is no basis whatever for this contention. No such ruling was ever invoked or made below. The ruling of the trial court on the demurrers merely established that it was not incumbent upon the state to affirmatively negative truth, for, indeed, truth under Georgia law is an affirmative defense which must be pleaded and proven by the defendant. Code Secs. 105-708; 26-2103; Constitution of 1945, Art. I, Sec. II, Par. I; **Ivestor v. Coe**, 33 Ga. 620, 127 S. E. 790 (1925).

The reason for the amendments referred to by petitioner had nothing to do with the issue of truth. The original petition for contempt was filed July 7, 1960 (R. 4). Petitioner's statement announcing that he expected to rely upon truth as a defense was made July 8 (R. 19). The petition for contempt was thereafter amended on July 27, but this amendment, although filed 19 days after petitioner's announcement, did not add the allegations now belatedly relied upon as foreclosing any offer of proof on the issue of truth (R. 14). The amendment which petitioner claims had this effect was not filed until August 10 (R. 42), five days after petitioner had filed demurrers and response invoking the clear and present danger doctrine

as a defense (R. 21-41), and it is apparent from a reading thereof that the amendment was designed merely to remove any doubt as to the state's claim that petitioner's conduct was in fact a clear and present danger to the administration of justice.

The bill of exceptions which carried the case to the Georgia Court of Appeals assigned error merely on the overruling of the demurrers and the judgment of contempt itself. No claim was made that the Court had denied petitioner the right to prove truth as a defense, and, under Georgia law, there must be a specific assignment of error on every antecedent ruling claimed to be erroneous where a motion for new trial was not filed below. **Ga. Procedure and Practice**, Sec. 23-9, at p. 542.

In dealing with this issue the Court of Appeals' decision clearly shows that it was ruling only insofar as required under the demurrer (R. 67).

In his 30-page petition for certiorari, filed in the Supreme Court of Georgia (not printed in the record), petitioner did not mention the issue of truth. The first time it was sought to be raised was in the motion for reconsideration filed in the Georgia Supreme Court (R. 77). The Supreme Court of Georgia will not consider questions not raised in the petition for certiorari. **Drewry v. State**, 208 Ga. 239 (1), 65 S. E. 2d 916 (1951). Nor was it raised in the petition for certiorari filed in this court. Cf. Rule 23 (1) (c); **United Brotherhood v. N. L. R. B.**, 357 U. S. 93, 1 L. Ed. 2d 1186.

Therefore, having failed to raise this question below and invoke a ruling thereon, petitioner cannot be heard to complain here, for constitutional questions must be timely asserted. **Whitney v. California**, 274 U. S. 357, 362, 71 L. Ed. 1095 (1927); **Yakus v. United States**, 321 U. S. 414, 88 L. Ed. 834 (1944); **Hartford Life Ins. Co. v. Johnson**, 249 U. S. 490, 492, 63 L. Ed. 722 (1919), and reasserted at

every stage of the proceedings as required by state practice. **Dorrance v. Pennsylvania**, 287 U. S. 660, 77 L. Ed. 570 (1932).

The necessity for strict application of the rule is even more pressing here. For example, petitioner's response alleged that when the grand jury charge was made a political campaign was then underway for nomination in the Democratic primary for county offices to be held on July 20, 1960 (R. 38). But had petitioner sought to adduce proof establishing the truth of this and related allegations, respondent was prepared to prove that the grand jury charge was not directed to the county primary, but had been precipitated by an election for city council held on April 20, 1960, at which one candidate had received 1001 of 1,262 Negro votes cast, and that reliable reports indicated that this had been accomplished by payments made to leaders of certain political organizations.[14] Similarly, the response alleged that petitioner was himself a candidate, the implication being made that he was a candidate in the primary campaign then in progress (R. 38), but had the matter progressed to the evidentiary stage, it would have shown that petitioner had previously announced that he was not a candidate in the primary, and he, in fact, did not run therein.[15]

Consequently, the issue of "truth" is not presented for decision in this case. **Rescue Army v. Municipal Court**, 331 U. S. 549, 91 L. Ed. 1666 (1947).

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[14] See the Macon Telegraph, April 22, 1960. This liberal newspaper, a persistent defender of Negro rights, had editorially deplored the city council election, declaring, "This was an election where racial matters were not involved in any way. It is the most flagrant instance of actual bloc voting that has ever occurred in Macon."

[15] There were five candidates for the office of sheriff participating in the primary. Petitioner was not one of them. He had previously announced that he was leaving the Democratic Party and "might" offer for some office in the general election as a Republican candidate.

In any event, however, truth is no defense to a charge of this nature, as held by this Court in **Patterson v. Colorado**, 205 U. S. 454, 462, 51 L. Ed. 879 (1907).

VII.

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

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VIII.

APPENDIX.

GEORGIA CONSTITUTIONAL AND STATUTORY PROVISIONS.

1. Georgia Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann. Sec. 2-120). **Contempts.** The power of the courts to punish for contempt shall be limited by legislative acts.

2. Georgia Code Ann., Sec. 34-9907. **Buying or selling votes, and voting illegally; competency of witnesses.** If any person shall:

1. Buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof; or

(Cobb, 819. Acts 1880-1, p. 129; 1906, p. 46.)

2. If any person shall vote at any such election who has not resided in this state one year next preceding such election; or

(Acts 1878-9, p. 157.)

3. Who has not resided six months next preceding said election in the county in which he has voted; or

(Acts 1878-9, p. 157.)

4. (Repealed.)

5. Who has been convicted in any court of competent jurisdiction of treason against the state, of embezzlement of public funds, malpractice in office, bribery, or larceny, or any crime involving moral tur-

pitude, punishable by the laws of this State with imprisonment in the penitentiary, unless he shall have been pardoned,

(Acts 1878-9, p. 157.)

He shall be guilty of a misdemeanor.

On the trial of any person for offending against this section, any other person who may have participated in any violation of the provisions of the same shall be a competent witness and be compelled to give evidence; and nothing then said by such witness shall, at any time, be received or given in evidence against him in any prosecution, except on an indictment for perjury in any matter to which he may have testified. All the provisions of this section shall be applicable, so far as the same may be, to all primary elections. **The hiring of workers qualified to vote in said election or primary before or on the day of election, for the purpose of canvassing for or influencing votes in behalf of any candidate, or the being hired for said purpose, shall be a misdemeanor** (Acts 1906, p. 46).

3. Section 34-1907.1 (Supp.) **Printing, having, or possessing ballot or likeness thereof.**—No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting (Acts 1949, pp. 1291, 1293).

Section 24-104. **Powers of Courts enumerated.** Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

3. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding therein.

4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

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5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary in the exercise of its powers and duties.

4. Section 24-105. **Powers of Courts to punish for contempt.** The powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of said courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said courts:

1. Provided, that in no case shall any person be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of law or any other court of this State, when he denies that the money ordered or decreed to be paid over is in his power, custody, or control, until he has a trial by jury as herein provided.

2. The allegation of the plaintiff, receiver, referee, or any other person or persons that the defendant has a certain sum of money within his power, custody, or

control, which he is withholding or refuses or fails to pay over, and the denial of the defendant that he has the power, custody or control of said money, shall form the issue to be tried by the jury, and the jury shall pass upon the fact.

3. The judge presiding shall cause questions to be propounded in writing to the jury, and every question propounded shall be answered by the jury in their verdict; and upon the answers made the judge shall adjudge or decree whether the defendant be or not in contempt, with the right to either party to move for a new trial and carry the case to the Supreme Court by bill of exceptions as in other civil cases.

4. The issue being made, a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to procure the attendance of defendant to appear and answer the final judgment or decree in the case, which shall be approved by the judge, and on failure to appear the bond shall be forfeited as in criminal cases, and in default of bond the defendant may be committed to jail for safekeeping until trial. (Acts 1892, p. 65.)

5. Section 24-2813. **Duties of Sheriffs.** It is the duty of the sheriff—(Act 1799, Cobb, 574, Act 1810, Cobb, 577, Act 1818, Cobb, 858, Act 1820, Cobb, 480, Act 1823, Cobb, 512. Acts 1853-4, p. 28.)

1. To execute and return the processes and orders of the courts, and of officers of competent authority, it not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

2. To attend, by themselves, or deputies, upon all sessions of the superior court of the county, and the

court of ordinary whenever required by the ordinary, and never to leave said courts while in session without the presence of one or both of said officers, if required, and to attend in like manner at the place of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under-officers present, as police to preserve order.

* * * * * * *

6. Section 24-2814. **Defaulting sheriffs or deputies; contempt of court; Removal.**—If any sheriff or deputy fails to comply with the provisions of section 24-2813, he shall be fined for a contempt, as the clerk of the superior court is in similar cases. Section 24-2724, as to removal, shall also apply to sheriffs.

7. Section 59-304. **Duties of Grand Jury.** Grand jurors are bound only to notice or make presentments of such offenses as may or shall come to their knowledge or observation after they shall have been sworn; nevertheless they have the right and power, and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations. (Cobb, 553.)

FEDERAL STATUTORY PROVISIONS.

8. Section 18, U. S. C. 401. **Contempt.**

"A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command."

9. Section 18, U. S. C. 1504. **Influencing grand or petit jurors.**

Whoever attempts to influence the action or decision of any grand or petit jurors of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than $1,000.00, or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

10. Section 18, U. S. C. 597. **Influencing Voters.**

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote.

Shall be fined not more than $1,000.00 or imprisoned not more than one year or both; and if the violation was wilful, shall be fined not more than $10,000.00, or imprisoned not more than two years, or both."